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THE GIFT OF

THE CITY GOVERNMENT OF SALEM

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THE

CHARTER

AND

ORDINANCES

OF THE

CITY OF SALEM, Mass

TOGETHER WITH THE

ACTS OF THE LEGISLATURE

RELATING TO THE CITY:

COLLATED AND REVISED

PURSUANT TO AN ORDER OF THE CITY COUNCIL,

BY

JOSEPH B. F. OSGOOD.

SALEM:
IVES & PEASE.....PRINTERS.
1853.

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CITY OF SALEM.

In Board of Mayor and Aldermen, May 9, 1853.

ORDERED, That the joint standing committee on printing cause the revision and printing of the city ordinances, with such other matters as they may deem expedient—and that said committee be authorized to employ such assistance as may be necessary, and that the expense thereof be charged to the appropriation for incidental expenses.

Sent down for concurrence.

JOSEPH CLOUTMAN, CITY CLERK.

In Common Council, May 9, 1853.

Read twice and concurred.

NATHANIEL CLEAVES, CLERK.

PREFACE.

In accordance with the instructions and authority contained in the foregoing order of the city council, the committee therein appointed employed Joseph B. F. Osgood, Esq., to examine and revise the ordinances of the city, and arrange and prepare them for publication.

Upon examination, it was found necessary to revise many of the old ordinances passed soon after the incorporation of the city, and to prepare several new ordinances adapted to present municipal wants. These have been revised and severally passed by the city council, since the work was commenced. Heretofore the ordinances of each year have been published in the chronological order of their passage. In the following pages a different arrangement under separate titles, has been adopted as more convenient and useful for reference.

In connection with the ordinances, it was deemed advisable to publish all the special laws relating to the city, now in force; such statute provisions as require the appointment of officers by, or impose special duties on either, or both, branches of the city council, and also a selection of such other general laws, as would make the volume a valuable assistant to those called to administer the city government.[1] Although the legislative acts are presented in the form of a digest, with references to the original statutes, the language of the statutes has been used wherever the context would permit.

For the Committee,

JOHN G. FELT, CHAIRMAN.

---

1 In the arrangement of this part of the work, the valuable assistance derived from the Revised Ordinances of the city of Boston, prepared and published in 1850, under the direction of Hon. Peleg W. Chandler, is hereby acknowledged.

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CITY CHARTER AND ORDINANCES,

AND

STATUTES RELATING TO THE CITY OF SALEM.

ERRATA.

On page 29, in the 18th line, for "Peters" read "Porters."
On page 65, in the last line of the note, for "Quere" read "*Quære.*"
On page 73, in the 19th line, for "[13]" read "[12.]"
On page 73. in the 23d line, for "[14]" read "[13.]."
On pages 166, 167, 168, in the caption for "Police," read "Police Court."
On page 172, line 17 of margin, for "work house," read "house of correction"
On page 209, in the first line of the margin, strike out the word "not."

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CITY OF SALEM.

CITY CHARTER AND AMENDMENTS.

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3. Division into six wards. Each ward to include an equal number of voters.
4. Annual municipal election. Warden and clerk. Absence of warden or clerk. Assistant wardens. Warden, clerk, and assistants to be under oath. All warrants issued by mayor and aldermen.
5. Election of mayor and city council. Term of office.
6. Choice of mayor, aldermen and common council. Mode of election. Common councilmen elect to be notified. Adjournment of meeting. Examination of votes. Mayor to be notified of his election. Proceedings in case of failure to elect a mayor or his refusal to accept. Vacancy in the office of mayor. Vacancies in the board of aldermen. Aldermen elect notified. Oath administered to mayor. Annual organization of city government. Oaths of office. Organization of common council. President of common council. Authority of each board.
7. Mayor the chief executive officer of the city. His powers and duties. May call special meetings, &c. Mayor to preside, &c. Compensation of mayor.
8. Powers of mayor and aldermen. City Marshal, constables and other police officers appointed. Licenses. Powers of city council. Election of overseers of the poor and other city officers. Sittings of the city council to be public. Accountability. Care and custody of city property. Power to purchase property. Annual financial statement to be published.
9. Mayor may nominate in certain cases of appointment to office. Proviso. Members of the city council not eligible to any other office. Proviso.
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5. To be adopted by the citizens.
6. Revised Statutes c. 3, § 5 not to apply to Salem. List of voters to be posted.

AN ACT ESTABLISHING THE CITY OF SALEM.

[Statute of 1836, Chap. 42.]

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Corporate name and general powers.

SECTION 1. The inhabitants of the town of Salem shall continue to be a body politic and corporate, under the name of the city of Salem, and as such, shall have, exercise and enjoy all the rights, immunities, powers and privileges, and shall be subject to all the duties and obligations, now incumbent upon and appertaining to said town as a municipal corporation.

City government.

SECT. 2 The administration of all the fiscal, prudential and municipal affairs of said city, with the government thereof, shall be vested in one principal

officer, to be styled the mayor, one council of six, to be denominated the board of aldermen, and one council of twenty-four, to be denominated the common council; which boards in their joint capacity, shall be denominated the city council, and shall be sworn to the faithful performance of the duties of their respective offices. A majority of each board shall constitute a quorum for the transaction of business.

City council to be sworn.

Quorum of each board.

SECT. 3. From and after the first Monday in March next, for the purpose of holding all elections, said city shall be divided into six[1] wards, to contain, as near as conveniently may be, an equal number of inhabitants. And it shall be the duty of the city council, once in ten years, and not oftener, to revise, and if it be needful, to alter said wards in such manner as to preserve, as nearly as may be, an equal number of voters in each ward.

Division into six wards. 1837, 4 § 1

Each ward to include an equal number of voters.

SECT. 4. On the Tuesday preceding the second Monday in March annually, there shall be chosen by ballot, in each of said wards, a warden and clerk, who shall hold their offices for one year, and until others shall have been chosen in their places.[2] And it shall be the duty of such warden to preside at all ward meetings, with the powers of moderators of town meetings. And if, at any meeting, the warden shall not be present, the clerk of such ward shall call the meeting to order, and preside

Annual municipal election.

Warden and clerk

Absence of Warden or clerk.

---

1 The statute of 1837, c. 4, § 1, provides that the city shall be divided into *four* wards.

2 The statute of 1851, c. 167, provides as follows:

SECT. 1. At the first election held after a new division of wards, in any city in this Commonwealth, the respective ward officers, chosen under the preceding organization, shall officiate in the same numerical ward for which they were chosen respectively, and shall continue to act there until others shall be chosen and qualified in their stead.

SECT. 2. All officers chosen at any meeting called by the mayor and aldermen of any city, after such new division into wards, shall hold their offices until the next annual meeting, and until others shall be chosen and qualified in their stead.

until a warden *pro tempore* shall be chosen by ballot. And if at any meeting the clerk shall not be present, a clerk *pro tempore* shall be chosen by ballot. The clerk shall record all the proceedings and certify the votes given, and deliver over to his successor in office all such records and journals, together with all other documents and papers held by him in said capacity.

Assistant wardens

The inhabitants of each ward shall choose by ballot two persons to assist the warden in receiving, sorting and counting the votes. And the warden, clerk and

Warden, clerk, and assistants to be under oath.

assistants so chosen, shall respectively be under oath, faithfully and impartially to discharge their several duties relative to all elections, which oath may be administered by any justice of the peace of said city.

All warrants issued by mayor and aldermen.

And all warrants for the meetings of the citizens for municipal purposes, to be had either in wards or in general meetings, shall be issued by the mayor and aldermen, and shall be in such form, and shall be served, executed and returned at such time, and in such manner, as the city council may, by any by-law, direct and appoint.

Election of the mayor and city council.

SECT. 5. The mayor and aldermen shall be elected from the citizens at large, by the inhabitants of the city voting in their respective wards, and four[1] common council men shall be elected from each ward, being residents in the wards where elected; all said officers

Term of office.

shall be elected by ballot, and shall hold their offices one year from the second Monday[2] in March, and until others shall be elected in their places.

Choice of mayor, aldermen and common council.

SECT. 6. On the Tuesday next preceding the second Monday in March annually, immediately after a warden and clerk shall have been elected and sworn, the qualified voters in each ward shall give in their votes for a mayor, six aldermen, and four[1] common council

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[1] The statute of 1837, c. 4, § 2, altered the number to *six*—see *post* p. 15.

[2] See statute of 1837, c. 4, § 4, *post* p. 16.

men: all the votes given for the said several officers respectively, shall be sorted, counted, declared and registered in open ward meeting, by causing the names of persons voted for, and the number of votes given for each, to be written in the ward record, in words at length. The ward clerk, within twenty-four hours after such election, shall deliver to the persons elected common council men, certificates of their election, and shall forthwith deliver to the city clerk a certified copy of the record of such election. *Provided, however*, that if the choice of common council men cannot conveniently be effected on that day, the meeting may be adjourned to another day, not more than two days thereafter, to complete such elections.[1] The board of aldermen shall, as soon as conveniently may be, examine the copies of the records of the several wards certified as aforesaid, and shall cause the person who shall have been elected mayor by a majority of the votes given in all the wards, to be notified in writing of his election; but if it shall appear that no person shall have been so elected, or if the person elected shall refuse to accept the office, the said board shall issue their warrants for another election, and the same proceedings shall be had in all respects as are herein before directed for the choice of mayor, and repeated from time to time until a mayor shall be chosen; and in case of a vacancy in the office of mayor, by death, resignation or otherwise, it shall be filled for the remainder of the term, by a new election, in the manner herein before provided for the choice of said officer. And if it shall appear that the whole number of aldermen shall not have been elected, the same proceedings shall be had as are herein before directed in regard to the choice of

Mode of election.

Common council men elect to be notified.

Adjournment of meeting.

Examination of votes.

Mayor to be notified of his election.

Proceedings in case of failure to elect a mayor, or his refusal to accept.

Vacancy in the office of mayor.

Vacancies in the board of aldermen

1 For proceedings when the whole number of common council men are not elected, see statute 1837, c. 4, § 4, *post* p. 16. In case of vacancies in the common council by death or resignation, see same statute § 5.

Aldermen elect notified.

Oath administered to mayor.

Annual organization of the city government.

Oaths of office.

Organization of the common council.

President of the city council pro tempore.

Authority of each board.

Mayor the chief executive officer of the city.

His powers and duties.

May call special meetings, &c.

mayor.[1] And each alderman elected shall be notified in writing of his election, by the mayor and aldermen for the time being. The oath prescribed by this act, shall be administered to the mayor by the city clerk, or any justice of the peace in said city. The aldermen and common council men elect shall, on the second[2] Monday in March, at ten o'clock in the forenoon, meet in convention, when the oaths required by this act shall be administered to the members of the two boards present, by the mayor or any justice of the peace, and thereupon the two boards shall separate, and the board of common council shall be organized by the choice of a president and clerk. The board of aldermen may, in the absence of the mayor, choose a president *pro tempore*, who shall preside at joint meetings of the two boards. Each board shall keep a record of its proceedings, and judge the election of its own members, and in case of failure of election, or of vacancy by death, resignation or otherwise, may order new elections.

SECT. 7. The mayor, thus chosen and qualified, shall be the chief executive officer of said city. It shall be his duty to be vigilant and active in causing the laws and regulations of the city to be executed and enforced, to exercise a general supervision over the conduct of all subordinate officers, and to cause their violation or neglect of duty to be punished. He may call special meetings of the board of aldermen and common council, or either of them, when, in his opinion, the interest of the city requires it, by causing a summons or notification to be left at the usual dwelling place of each member of the board or boards to be convened. He shall, from time to time, communicate to both of them such infor-

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[1] In case of vacancies in the board of aldermen, by death or resignation, see statute of 1837, c. 4, § 5.

[2] The statute of 1837, c. 4, § 4, provides that the annual organization of the city government shall take place on the fourth Monday of March,

mation, and recommend such measures, as the business and interest of the city may, in his opinion, require. He shall preside in the board of aldermen, and in joint meetings of the two boards, but shall have only a casting vote.[1] He shall be compensated for his services by a salary, to be fixed by the city council, payable at stated periods, and shall receive therefor no other compensation; but such compensation shall not be increased nor diminished during his continuance in office.

Mayor to preside &c.

Compensation of mayor.

SECT. 8. The executive powers of said city generally, and the administration of police, with all the powers heretofore vested in the selectmen of Salem, shall be vested in the mayor and aldermen, as fully as if the same were herein specially enumerated. And the said mayor and aldermen shall have full and exclusive power to appoint a city marshal and assistants, and a constable or constables, and all other police officers, and may remove the same when in their opinion sufficient cause for removal exists. And the said mayor and aldermen shall have full and exclusive power to grant licenses to innholders, victuallers and retailers, within said city, in as full and ample a manner as the mayor and aldermen of the city of Boston have authority to grant licenses in said city of Boston, by virtue of "an act for the due regulation of licensed houses." All other powers now vested in the inhabitants of said town, and all powers granted by this act, shall be vested in the mayor and aldermen and common council of said city, to be exercised by concurrent vote, each board to have a negative upon the other. But the city council shall annually, as soon after their organization as may be convenient, elect by joint ballot, in convention, the overseers of the poor, school committee, city treasurer and collector, firewards, city clerk, assessors and assis-

Powers of mayor and aldermen.

2 Met 220. 15 Pick 243.

City Marshal, constables and other police officers appointed.

Licenses.

1832 c. 166

Powers of the city council.

Election of overseers of the poor and other city officers.

[1] The statute of 1839 c. 46, § 2 provides that in all cases of ballot in convention of the two boards of the city council the mayor may vote. See *post*, p. 17.

tant assessors, and shall, in such manner as said city council shall determine by any by-law made for the purpose, appoint or elect all subordinate officers, not herein otherwise directed, for the ensuing year, define their duties, and fix their compensations, in cases where such duties and compensations shall not be defined and fixed by the laws of this Commonwealth. All sittings of the common council shall be public, and all sittings of the mayor and aldermen, when they are not engaged in executive business. The city council shall take care that moneys shall not be paid from the treasury unless granted or appropriated; shall secure a just and prompt accountability, by requiring bonds with sufficient penalty and sureties, from all persons trusted with the receipt, custody or disbursement of money; shall have the care and superintendence of city buildings, and the custody and management of all city property, with power to let or sell what may be legally let or sold except the common; and to purchase property, real or personal, in the name and for the use of the city, whenever its interest or convenience may in their judgment require it. And the city council shall, as often as once a year, cause to be published for the use of the inhabitants, a particular account of receipts and expenditures, and a schedule of city property.

Sittings of the council to be public.

Accountability.

Care and custody of city property.

Power to purchase property.

Annual financial statement to be published.

Mayor may nominate in certain cases of appointments to office.

Proviso.

Members of the city council not eligible to any other office.

SECT. 9. In all cases in which appointments are directed to be made by the mayor and aldermen, the mayor shall have the exclusive power of nomination, such nomination, however, being subject to be confirmed or rejected by the board of Aldermen. *Provided, however*, that no person shall be eligible to any office, the salary of which is payable out of the city treasury, who at the time of his appointment shall be a member either of the board of aldermen or common council. And neither the mayor nor any alderman, or member of the common council, shall, at the same time, hold any other office under the city

government.[1] *Provided, however*, that the mayor and president of the common council shall be, ex-officio, members of the school committee; *and provided further*, that said mayor and aldermen, and one common councilman from each ward, shall be overseers of the poor, if said city council shall so determine. Proviso.

SECT. 10. Said city council shall have power to choose a city clerk, who shall be clerk of the board of aldermen. He shall perform such duties as shall be prescribed by the board of aldermen, and shall perform all duties, and exercise all the powers, by law incumbent upon or vested in the town clerk of the town of Salem. City clerk and his duties.

SECT. 11. The city assessors, who shall be annually chosen by the city council, shall exercise the same powers, and be subject to the same duties and liabilities, that the assessors in the several towns in the Commonwealth may exercise, or be subject to, under existing laws. And the city council shall appoint two[2] persons in each ward, whose duty it shall be to furnish the assessors with all necessary information relative to persons and property taxable in their several wards, and who shall be sworn to the faithful performance of their duty. All taxes shall be assessed, apportioned and collected in the manner prescribed by the laws of the Commonwealth. *Provided however*, that the city Assessors and their duties. Assistant assessors. 1837. 4 § 1. Taxes. Proviso.

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1 The statute of 1851 c 70 § 1, provides that, The mayor, any alderman, or any member of the common council, of any city in this Commonwealth, may, at the same time, hold any other office under the city government of such city to which he may be duly chosen: *provided*, that the same be not an office of emolument; and by § 2 of same act its provisions shall be in force in these cities only which shall adopt the same by a vote of their city councils. The city council of Salem adopted the act July 28, 1851. [City Records Vol. 2, p. 276.]

2 The statutes of 1837 c. 4, § 1, provides that the city council shall elect annually one or more assistant assessors in each ward. See *post*. p. 15.

council may establish further or additional provisions for the collection thereof.[1]

Laying out and widening of streets.

SECT. 12. The city council shall have exclusive authority and power to lay out any new street or town way, or widen or otherwise alter or discontinue any street or town way in said city, and to estimate the damages any individual may sustain thereby; and all questions relating to the subject of laying out, widening, altering, or discontinuing any street, shall be first acted upon by the mayor and aldermen. And any person aggrieved by the decision or judgment of said city council, may, so far as relates to damages, make complaint to the next meeting of county commissioners, in the county of Essex, who are hereby empowered to hear and determine the same by a jury, or by a committee, if the parties agree, in the manner authorized by "an act to establish county commissioners, and to repeal the several acts establishing the courts of sessions, and in addition thereto, and the act establishing commissioners of highways," where a party claims greater damages than are awarded by said commissioners.

Mayor and aldermen shall first act upon all questions relating to streets.

Damages.

Board of health. 1837 4. § 3. 1799. 14. 1800 19 12 Pick. 184.

SECT. 13. All the power and authority now by law vested in the board of health for the town of Salem, shall be transferred to, and vested in, said city council, to be carried into execution by the appointment of health commissioners, or in such other manner as the said city council may deem expedient.[2]

Representatives to General Court.

SECT. 14. It shall be the duty of the city council, in the month of October annually, to meet in convention, and determine the number of representatives to be sent to the General Court, by said city, in such year, and

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[1] See *post*, under Taxes.

[2] The statute of 1837, c. 4, § 3 provides that the city council may elect health commissioners from either or both branches of the city government, *post* p. 15. See also stat. 1849, c. 211, and Health *post*.

to publish such determination, which shall be conclusive, and the number thus determined shall be specified in the warrant calling a meeting for the election of representatives.

Election of national, state and county officers.

SECT. 15. All elections for county, state, and United States officers, who are to be voted for by the people, shall be held at meetings of the citizens qualified to vote in such elections, in their respective wards, at the time fixed by law for those elections respectively. And at such meetings, all the votes given for said several officers respectively, shall be sorted, counted, declared and registered in open ward meeting, by causing the names of persons voted for, and the number of votes given for each, to be written in the ward record in words at length. The ward clerk shall forthwith deliver to the city clerk a certified copy of the record of such elections. The city clerk shall forthwith record such returns. And the mayor and aldermen shall, within two days after every such election, examine and compare all said returns, and make out a certificate of the result of such elections, to be signed by the mayor and a majority of the aldermen, and also by the city clerk, which shall be transmitted or delivered in the same manner as similar returns are by law directed to be made by the selectmen of towns. And in all elections for representatives to the General Court, in case the whole number proposed to be elected shall not be chosen by a majority of the votes legally returned, the mayor and aldermen shall forthwith issue their warrant for a new election, and the same proceedings shall be had as are herein before directed, until the whole number shall be elected.

Examination and return of votes.

Certificate.

Proceedings in case whole number of representatives shall not be chosen.

Mayor and aldermen to make list of voters prior to every election.

SECT. 16. Prior to every election, the said mayor and aldermen shall make out lists of all the citizens of each ward, qualified to vote in such elections, in the manner in which selectmen and assessors of towns are required to make out lists of voters, and for that

R. S. 3.

purpose they shall have full access to the assessors' books and lists, and be entitled to the aid and assistance of all assessors, assistant assessors, and other officers of said city, and they shall deliver said lists, so prepared and corrected, to the clerk of said ward, to be used at such elections,[1] and no person shall be entitled to vote, whose name is not borne on such list. And to prevent fraud and mistake, a mark shall be placed against the name of each voter on such list at the time of giving his vote.

1839, 46, § 6.

No person allowed to vote whose name is not on the list.

General meetings of citizens.

SECT. 17. General meetings of the citizens qualified to vote, may from time to time be held, to consult upon the public good, to instruct their representatives, and to take all lawful measures to obtain redress of any grievances, according to the right secured to the people by the Constitution of this Commonwealth, and such meetings may and shall be duly warned by the mayor and aldermen, upon the requisition of thirty qualified voters of said city.

To be called on requisition of thirty voters.

Division of the city into wards.

SECT. 18. It shall be the duty of the city council, seasonably before the Tuesday next preceeding the second Monday in March next, to cause a division of said city to be made into six[2] wards, in such manner as to include, as nearly as conveniently may be, with well defined limits to each ward, an equal number of inhabitants in each ward. And the present division of said town into wards shall continue, and all ward meetings, and all elections, shall be held in them, until the meetings for the election of city officers in March next.

Form of organizing the city.

SECT. 19. For the purpose of organizing the system of government, hereby established, and putting the same into operation in the first instance, the selectmen of the town for the time being, shall seasonably before

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1 See statute of 1839, c. 46, § 6, *post.* p. 17.

2 See note 1 *ante* p. 3.

the fourth Monday in April next, issue their warrants for calling meetings of the said citizens, at such place and hour as they shall deem expedient, for the purpose of choosing a warden and clerk for each ward, and also to give in their votes for a mayor and six aldermen, to be taken from the city at large, and six common council men for each ward, and the transcripts of the records of each ward, specifying the votes given for a mayor, six aldermen, and six common council men, certified by the warden and clerk of each ward, shall at said first election be returned to the said selectmen, whose duty it shall be to examine and compare the same. And in case said elections should not be completed at the first election, then to issue a new warrant until such elections shall be completed, and to give notice thereof in the manner herein before directed, to the several persons elected. And at said first meeting, any inhabitant of said ward, being a legal voter, may call the citizens to order, and preside until a warden shall have been chosen. And at said first meeting, a list of voters in each ward, prepared and corrected by the selectmen of the town of Salem, for the time being, shall be delivered to the clerk of each ward, when elected, to be used as herein before directed. And it shall be the duty of the city council immediately after their first organization, to elect all necessary city officers, who shall hold their offices respectively until the second Monday in March then next, and until others are chosen. And the meetings in March next, for the election of ward and city officers, shall be called by said mayor and aldermen at such time and places, and in such manner as they shall direct. And at the said first meeting, the said inhabitants may and shall also give in their votes for county officers, which votes shall be recorded, certified and returned, in the manner provided in the fifteenth section of this act.

Return of votes.

SECT. 20. The city council shall have power to

Powers of the city council as to by-laws and penalties.

make all such salutary and needful by-laws as towns by the laws of this Commonwealth have power to make and establish, and to annex penalties, not exceeding twenty dollars, for the breach thereof, which by-laws shall take effect and be in force from and after the time therein respectively limited, without the sanction of any court, or other authority whatever.[1] *Provided however*, that all laws and regulations now in force in said town of Salem, shall, notwithstanding this act, be and remain in force, until they shall expire by their own limitation, or be revised or repealed by the city council, and all fines and forfeitures for the breach of any by-law, shall be paid into the city treasury.

Proviso.

Police Court to have cognizance of offences

SECT. 21. The police court of the town of Salem, in addition to its present powers and jurisdiction, which are hereby continued to it, shall have cognizance of all offences against the by-laws and regulations which may be established by the city council of the city of Salem, and may, on conviction thereof, award such sentence as to law and justice may appertain. And any person aggrieved by such sentence, may appeal therefrom to the court of common pleas for the county of Essex, under the restrictions and conditions provided by law in other cases of appeal from said court.[2]

Appeal from.

Annual town March meeting suspended

SECT. 22. The annual town meetings in the month of March or April, shall be suspended, and all town officers now in office shall hold their places until this act shall go into operation, or until fourteen days after the same shall have been rejected by the inhabitants of said town; and in case said charter should be rejected by said inhabitants, the selectmen shall have authority, within fourteen days after such rejection, to call a meeting of said inhabitants, for the choice of town and county officers.

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1 For general powers of city councils to make by-laws, see ordinances and by-laws.—See also statute 1847 c. 262.

2 See Police Court.

SECT. 23. All such acts and parts of acts as come within the purview of this act, and are inconsistent with or repugnant to the provisions of this act, shall be, and the same are, hereby repealed. Repealing clause.

SECT. 24. Nothing in this act contained shall be so construed as to prevent the legislature from altering or amending the same, whenever they shall deem it expedient. Legislature may alter or amend this charter.

SECT. 25. This act, except the twenty-second section, shall be void, unless the inhabitants of the town of Salem, at a legal town meeting called for that purpose, shall, by a written vote, determine to adopt the same within fourteen days. To be adopted by the citizens.

Adopted April 4, 1836. Salem Records from March 1831 to 1836. p. 149.

AN ACT IN ADDITION TO AN ACT ENTITLED "AN ACT INCORPORATING THE CITY OF SALEM."

[Statute of 1837, Chap. 4.]

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

SECTION 1. The city of Salem shall be divided into four wards, and the city council shall elect annually one or more assistant assessors in each ward. Wards altered. Assistant assessors.

SECT. 2. Six common council men shall be annually elected in each ward; and wherever it shall so happen that the whole number of common council men shall not be so chosen at the meeting or meetings now provided for, the same proceedings shall be had, as are provided [illegible] reference to the choice of mayor. Number of common council men altered. Proceedings when no choice is made.

[illegible] city council may elect health com- Health commissioners.

missioners from either or both branches of said city council.

Time of annual organization of city government altered.

SECT. 4. The annual organization of the city government shall take place on the fourth Monday in March; and the present officers shall hold their offices until others shall be chosen and qualified in their stead.

Vacancies in board of aldermen and common council how filled.

SECT. 5. In case of the death or resignation of any member of the board of aldermen, or of the common council, such vacancy may be filled at any regular meeting of the inhabitants of said city, called for that purpose.

Repealing clause.

SECT. 6. All the provisions of the act, to which this is in addition, inconsistent with the provisions of this act, are hereby repealed.

To be adopted by the citizens. [Adopted, Febuary 20, 1837. City Records vol. 1, p. 66.]

SECT. 7. This act shall be void, unless the inhabitants of said city, at a general meeting, called for that purpose, shall by written votes accept the same within twenty days from its passage.

AN ACT IN ADDITION TO AN ACT INCORPORATING THE CITY OF SALEM.

[Statute of 1839, Chap. 46.]

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

Power of city council to construct drains and sewers.

SECTION 1. The city council shall have authority to cause drains and common sewers to be laid down through any streets or private lands, paying the owners thereof such damage as they may sustain thereby, and to require all persons to pay a reasonable sum for the privilege of opening any drain into said public drain or common sewer.

Mayor may vote in all cases of ballot in convention.

SECT. 2. In all cases of ballot in convention of the two boards of the city council, the mayor may vote.

Payments to enginemen, &c.

R. S. 18. § 19.

SECT. 3. The nineteenth section of the eighteenth chapter of the revised statutes, shall be so far modified in respect to the city of Salem, as that the account of payments from the city treasury to enginemen and members of the fire department may be kept and settled for the year, ending the first day of April instead of May.

Powers of city council to make by-laws for inspection of wood, &c.

SECT. 4. The city council may make by-laws with suitable penalties for the inspection, survey, admeasurement and sale of wood, coal and bark for fuel, brought by water into the city for sale, and may provide for the appointment of surveyors, inspectors and other officers and establish their fees of office.

To be adopted by the citizens

[Adopted March 23. 1839. City Records Vol. I, p. 176.]

SECT. 5. This act shall be void, unless the inhabitants of said city, at a general meeting called for that purpose, shall by written votes accept the same within twenty days from its passage.

Rev. Stat. c. 3. § 5 not to apply to city of Salem.

SECT. 6. The fifth section of the third chapter of the Revised Statutes, shall not be construed as binding upon the city of Salem; but in lieu thereof, the mayor and aldermen, shall at least seven days before every election cause a list of all the voters, arranged in their respective wards, to be posted up in the city hall, or some other public place within the city.

List of voters to be posted.

LAWS OF THE COMMONWEALTH,

AND

CITY ORDINANCES.

AGENTS.

STATUTES.

1. Agents to be appointed by cities and towns to sell liquors for medicinal, chemical and mechanical purposes. To be paid by fixed salaries. To hold office one year unless sooner removed.
2. Agents to be furnished with certificate of authority. To give bond. Form of bond. Mayor and aldermen to keep public record of names and certificates of agents. To furnish list of names of agents to county commissioners.
3. Mayor and aldermen to revoke appointment of agent breaking his bond. To put in suit bonds broken.

Agents to be appointed by cities and towns to sell liquors for medicinal, chemical, and mechanical purposes. 1852, 322, § 2.

1. The selectmen of any town, and the mayor and aldermen of any city, on the first Monday of May, annually, or as soon thereafter as may be convenient, may appoint some suitable person or persons as agent or agents of such city or town, to sell at some central or convenient place or places, within said city or town, spirits, wines, or other intoxicating liquors, to be used for medicinal, chemical, and mechanical purposes, and no other; and such agent or agents shall receive such fixed and definite salary, not dependent in amount upon the sales, for his or their services, as the board appointing him or them shall prescribe, and shall, in the sale of such liquors, conform to such rules and regulations as the selectmen and mayor and aldermen aforesaid shall prescribe for that purpose; and every such agent shall hold his situation for one year from the time of his appointment, unless sooner removed by the board which appointed him, as he may be at any time, at the pleasure of said board.

To be paid by fixed salaries.

To hold office one year unless sooner removed.

Agents to be furnished with certificate of authority. Ibid § 3.

2. Every agent, appointed as aforesaid, shall receive a certificate from the mayor and aldermen, or selectmen by whom he has been appointed, authorizing him, as agent of such city or town, to sell intoxicating liquors for medicinal, chemical, and mechanical purposes only, at such place within their respective town or city as by them shall be deemed suitable, which place shall be

designated with precision in said certificate; but such certificate shall not be delivered to the person so appointed until he shall have executed and delivered to said board a bond, with two good and sufficient sureties, in the sum of six hundred dollars, in substance as follows:

To give bond

Form of bond

Know all men that we ———, as principal, and ——— and ———, as sureties, are holden and stand firmly bound to the inhabitants of the town of ———, (or city, as the case may be,) in the sum of six hundred dollars, to be paid unto them, their successors, or assigns, to which payment we bind ourselves, our heirs and executors, or administrators, firmly by these presents. Sealed with our seals and dated this ——— day of ———, A. D. ———. The condition of this obligation is such, that whereas the above bounden ——— has been duly appointed an agent for the town of —— to sell within, for, and on account of said town or city, intoxicating liquors for medicinal, chemical, and mechanical purposes, and no other, until the ——— day of —— , A. D. ———, unless sooner removed from said agency. Now, if the said ——— shall, in all respects, conform to the provisions of law relating to the business for which he is appointed, and to such rules and regulations as now are, or shall, from time to time, be established by the board making the appointment, then this obligation to be void; otherwise to remain in full force. And the selectmen, and mayor and aldermen, shall keep a record of the names and certificates, in full, of all persons by them appointed, as aforesaid, which record shall be open to public inspection at all reasonable times, and they shall, as soon after the appointments of said agents as practicable, furnish a list of said names to the county commissioners of the several counties, and mayor and aldermen of the city of Boston.

Mayor and aldermen to keep public record of names and certificates of agents, and to furnish list of names of agents to county commissioners.

3. The mayor and aldermen of any city, and the

selectmen of any town, whenever complaint shall be made to them that a breach of the conditions of the bond given by any person appointed as agent of said city or town, under this act, has been committed, shall notify the person complained of, and if, upon a hearing of the parties, it shall appear that any breach has been committed, they shall revoke and make void his appointment. And whenever a breach of any bond, given to the inhabitants of any city or town in pursuance of the provisions of this act, shall be made known to the mayor and aldermen, or selectmen, or shall in any manner come to their knowledge, they shall, at the expense and for the use of said city or town, cause the bond to be put in suit in any court proper to try the same.[1]

Mayor and aldermen to revoke appointment of agent breaking his bond. Ibid. § 10.

To put in suit bonds broken.

AMUSEMENTS.

STATUTES.

1. Mayor and aldermen may license theatrical and other exhibitions, &c.
2. Penalty for exhibition, &c. without license.
3. Masked balls forbidden, under penalty.

1. The mayor and aldermen of any city, or the selectmen of any town, may license all theatrical exhibitions, public shows, public amusements, and exhibitions of every description, to which admission is obtained upon payment of money, or the delivery of any valuable thing, or by any ticket, or voucher, obtained for money, or any valuable thing, upon such terms and

Mayor and aldermen may license theatrical and other exhibitions, &c. 9. Pick. 415. 1849, 231, § 1.

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[1] For general provisions relating to the sale of spirituous and intoxicating liquors, see statute of 1852, c. 322.

conditions as they shall think reasonable; and they may revoke or suspend the same whenever there shall appear to them to be sufficient cause for such revocation or suspension.

Penalty for exhibition without a license. Ibid, § 2.

2. Any person who shall offer to view, or shall get up, set on foot, maintain, or carry on, or shall publish, or otherwise assist in, or promote any such exhibition, show, or amusement, as mentioned in the preceding section, without a license as therein specified, shall be punished by a fine not exceeding five hundred dollars for each offence.

Masked balls forbidden, under penalty. Ibid, § 3.

3. Any person who shall get up and set on foot, or cause to be published, or otherwise aid in getting up and promoting any masked ball, or other public assembly, at which the company wear masks, or other disguises, and to which admission is obtained upon payment of money, or the delivery of any valuable thing, or by any ticket or voucher obtained for money, or any valuable thing, shall be punished by a fine not exceeding five hundred dollars; and for a repetition of the offence, by imprisonment in the common jail or house of correction, not exceeding one year.

ARMORIES.

STATUTES.

1. Mayor and aldermen, and selectmen, to provide armories. Expense to be paid by Commonwealth.
2. To make and transmit to adjutant general certificate of name of company and necessity of armory.
3. Board of commissioners to examine and audit claims for rent of armories. To file certificate of claims allowed with treasurer of Commonwealth, who shall pay such claims.
4. Penalties for making false certificates.
5. Inconsistent laws repealed.

Mayor and aldermen, and selectmen, to provide armories. 1853, 188. § 1.

1. It shall be the duty of the mayor and aldermen of cities, and of the selectmen of towns, in this Commonwealth, from time to time, to provide each and every company of cavalry, artillery, infantry, light infantry and riflemen, within the limits of their respective cities and towns, which are now or which may hereafter be duly organized under the laws of the Commonwealth, with suitable and proper armories or places of deposit for the safe keeping of the arms and equipments furnished to such company or companies, from time to time, by the adjutant general, under the authority of law; and the expense thereof shall be paid out of the treasury of the Commonwealth, in manner as hereinafter provided.

Expense to be paid by Commonwealth.

To make and transmit to adjutant general certificate of name of company and necessity of armory. Ibid, § 2.

2. The said mayor and aldermen and selectmen shall annually, in either of the months of October or November, make out and transmit to the office of the adjutant general, verified by the oath or affirmation of two at least of said mayor and aldermen, or selectmen, a certificate or return showing the name of each company furnished with an armory, and the amount paid or allowed for the rent or use thereof; and said certificate or return shall embrace also, in substance, as follows: That the armory or armories so furnished by said mayor and aldermen, or selectmen, are such and such only as, in the opinion of a majority thereof, are necessary for the legitimate uses of such company or companies as an armory or armories, and that the value of the annual rent thereof, according to the value of real estate in the city or town wherein the same is or are located, is fully equal to the sum or sums paid or claimed therefor.

Board of commissioners to examine and audit claims for rent of armories. Ibid, § 3.

3. The adjutant general, the treasurer and receiver general, and the auditor of this Commonwealth, respectively, for the time being, shall constitute a board of commissioners to examine and audit all accounts and claims for rent of armories made in pursuance of the

provisions of this act; and on or before the first day of January in each year, it shall be the duty of the said board to examine the several returns and certificates mentioned in the preceding section, and to institute such inquiries in relation thereto, as they may deem expedient and proper, to cause the same to be corrected if necessary, and to allow such accounts and claims, either in whole or in part, as said commissioners shall deem to be just, and in accordance with the true intent and meaning of this act: *provided, however*, that in no case whatever shall there be allowed in payment for an armory for any one company, a greater sum annually than three hundred dollars. And it shall be the further duty of the said board of commissioners to file in the office of the treasurer of the Commonwealth, within ten days after they shall have completed their said examination, a certificate signed by them, showing the sum and sums thus allowed, and the names of the respective companies for whose use the same was allowed, and the city or town to which such companies belong. And the said adjutant general shall thereupon immediately notify the said mayor and aldermen and selectmen, of the sum and sums thus allowed; and the amount thereof shall be paid by the treasurer to the said mayor and aldermen and selectmen, respectively, on demand, in the same manner as is now provided by law for the reimbursement of sums paid out by them to the officers and members of the volunteer militia for military service.

To file certificate of claims allowed with treasurer of Commonwealth, who shall pay such claims.

4. Any person or persons named or referred to in this act, who shall be guilty of making any false return or certificate, required by this act to be made under oath, as hereinbefore provided, with intent to defraud the Commonwealth, shall be deemed to have committed the crime of perjury, and shall be punished therefor accordingly. And if, by reason of such false return or certificate, wilfully made by the mayor and aldermen

Penalties for making false certificates. Ibid, § 4.

of any city, or the selectmen of any town, or any one or more of them, there shall be paid out of the treasury of this Commonwealth to such city or town any sum or sums of money to which such city or town is not entitled, according to the true intent and meaning of this act, the city or town so receiving the same, shall be punished by a fine not exceeding four times the amount of money so received, to be recovered by indictment in any of the courts of this Commonwealth of competent jurisdiction.

5. All acts and parts of acts, inconsistent with the provisions of this act, are hereby repealed.[1]

Inconsistent laws repealed. Ibid, § 5.

BOATS AND LIGHTERS.

STATUTES.
1. Weighers of Lighters, &c., to be appointed by the mayor and aldermen.

1. The selectmen of every town[2] where lighters or other vessels are employed in transporting stones, gravel or sand, shall in the months of March or April, annually, appoint one or more weighers of vessels, who shall be sworn to the faithful discharge of the duties of that office.[3]

Weighers of lighters, &c., to be appointed by the mayor and aldermen. R. S. 31, § 1. 1836, 42 § 8.

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1 See statutes of 1840 c. 92, § 20: 1852 c. 104, § 11 to which this section applies.

2 By § 8 of the city charter all the powers vested in the Selectmen of Salem were vested in the mayor and aldermen.

3 For general provisions respecting lighters see Rev. Stat. c. 31.

BOUNDARY LINES.

STATUTES, &c.

1. Line between Salem and Danvers.
2. Line between Salem and Danvers altered.
3. Further altered.
4. Line between Salem and Lynn.
5. Line between Salem and Marblehead.

PERAMBULATIONS.

6. Statute relating to .
7. Salem and Danvers.
8. Salem and Lynn.
9. Salem and Marblehead.

Line between Salem and Danvers.

1. It appears from the town records, that on the seventeenth day of September, 1804, the Selectmen of Salem and Danvers perambulated and ran the lines between said towns and an agreement was then made, to place permanent bound-stones upon the boundary lines. Pursuant to said agreement the selectmen of Salem and Danvers, on the ninth day of April, 1805, "having met in the road leading from Danvers to Boston, where the towns of Salem, Lynn and Danvers meet, there was placed in the ground a stone marked S. for Salem, L. for Lynn, D. for Danvers: thence continuing on the westerly and northerly side of the road till it comes to the two stone bridges by Butts Brooks, so called, on the northerly side of which, between said bridges, there was placed in the ground another stone marked S. for Salem, D. for Danvers: thence crossing the road at a right angle and running on the easterly and southerly side of the road, till it comes in the road a little to the northward of the house late Troffatter's, where another stone was placed in the ground on the easterly side of the road, marked as above: thence in the road leading from Salem to Danvers, near the northwest corner of the house late of Bancroft, where another stone was placed in the ground marked as above: thence on the southerly, and easterly side of the road till it comes opposite to the great elm tree: thence at

Town records frum April 1800 to March 1818, p. 213.

right angles cross the road to said tree, on the easterly side of which was placed in the ground another stone marked: thence to a stake in the river a little easterly of Trask's Mills, so called; thence to the lower road leading from Northfields to Trask's Mills, so called, on the southerly side of which was placed another stone in the ground, marked as above: thence continuing north eleven and a half degrees east, till it comes to the upper road leading from Northfields to Trask's Mills, near the stump of an oak tree which was the former bound; on the northerly side of the road was placed another stone in the ground marked as above; thence continuing the same course till it comes to the road leading from Salem to the New Mills, so called, in Danvers, where another stone was placed in the ground, on the westerly side of the road, marked as above: thence continuing the same course till it comes to the Thatch Bank on Peters' Neck, so called, in the Northfields, where another stone was placed in the ground, on the easterly side of the northeasterly point of said neck marked as above."

Line between Salem and Danvers altered.

2. By an act passed in 1840, the boundary line between the city of Salem and the town of Danvers was in part altered and established anew as follows: beginning in Danvers at the elm tree on the plain in Boston street, which stands thirty-six feet southerly of the south-easterly corner of Caleb Smith's house, and extending thence, at right angles with Boston street, in a course north thirty-nine degrees east, to the centre of the channel of the North river, (a bound stone being placed on the south bank of the river opposite this point:) thence north-westerly by the channel of the river about one hundred and fifty rods, to a point directly opposite the westerly boundary of the Harmony Grove Cemetery: thence by the westerly boundary of said cemetery, in a course north forty-there degrees fifteen minutes east, about sixty rods, to the north- 1840, 36 § 1.

westerly corner of said cemetery; thence by the northerly boundary of said cemetery, in a course south, fifty-seven degrees thirty minutes east about eighty-three rods, to a bound stone in the wall at the southwesterly corner of the field now belonging to Ichabod Nichols; thence by the wall on the westerly side of said field, and across the private way called Dark Lane, in a course north, forty-eight degrees east, about sixty-two rods and six links, to a bound stone in the field now belonging to Jonas Harrington, on the ancient boundary line between Salem and Danvers, and nine rods nine links northerly of the present bound-stone in School-house lane; and all the territory lying in Danvers, between the line thus described and the boundary line heretofore established, is hereby annexed and the jurisdiction thereof confirmed to the city of Salem.

Boundary line further altered. Ibid § 2.

3. The boundary line between the said city and town shall be further altered in part and established anew, as follows: beginning in Salem, at the centre of Pool's bridge, on the southwesterly side of Boston street, at a point six rods southeasterly from the present bound-stone, and two feet from the northerly corner of the brick store now belonging to William Sutton, and extending thence in a course south forty-six degrees and forty-five minutes west, for the distance of seven rods and fifteen links on the brook; thence in a course south sixty-two degrees and thirty minutes west, for the distance of ninety-three rods and ten links, to the south-easterly corner of the field now belonging to Ebenezer Shillaber, being fourteen and a half feet from the southwesterly corner of the house belonging to the heirs of Jonathan Smothers, recently deceased; thence in a course north twelve degrees and fifteen minutes west, for the distance of about twenty-four rods by the northerly side of Aborn street to the Boston road; and all the territory lying in Salem between the line thus described and the boundary line heretofore established,

is hereby annexed, and the jurisdiction thereof confirmed, to the town of Danvers.

Line between Salem and Lynn

4. On the seventeenth day of September, 1804, the selectmen of Salem and Lynn perambulated the bounds and ran the lines between said towns, as follows: "Beginning on the road leading from Salem to Boston, near Gallucia's, thence running south-easterly over a branch of Spring Pond to the Beach: It was then agreed between the selectmen of Salem and Lynn, that there should be permanent bound stones put down between the said towns and the line run between the said towns, and having met (on the thirty-first day of July, 1805,) on the road leading from Salem to Boston, where a stone was set, where the towns of Salem, Lynn and Danvers meet, marked S. for Salem, L. for Lynn, D. for Danvers: thence running south-easterly till it meets the Salem Turnpike road, where another stone was placed in the ground on the westerly side of the road, marked S for Salem, L for Lynn; thence running the same course till it meets the road leading from Marblehead to Lynn Beach, on the westerly side of which was placed in the ground another stone marked as above, near to the house of John Phillips; thence continuing the same course to the beach near which another stone was placed in the ground with a pile of small stones about it, about two rods from the mouth of a run of water."

Town records from April, 1803, to March, 1818, p. 218.

Line between Salem and Marblehead.

5. Pursuant to an agreement made on the seventeenth day of September, 1804, between the selectmen of Salem and Marblehead, that permanent bound-stones should be put down and the lines run between said towns, the selectmen of Salem and Marblehead, on the thirty-first day of July, 1805, met at the sea side and placed a stone in the ground near a run of water, marked S for Salem and M for Marblehead; thence running northwesterly to the road leading from Marblehead to Lynn Beach, on the easterly side of which was placed

Town records from April 1803, to March, 1818, p. 216.

another stone marked as above mentioned near John Phillips' house; thence continuing the same course to the road running from Marblehead to Lynn, on the southerly side of which was placed another stone in the ground marked as above mentioned near the house late Blaney's, now Hooper's; from thence in the same road about eighty-three poles northeasterly another stone was placed on the north side marked as above, one pole and twenty links south of the true bounds which is in the land of Capt. John Prince; thence running to the road leading to Forest river, where another stone was placed in the ground on the westerly side of the road, two poles due east of the true bounds near Silver Hole; from thence a little eastward another stone was placed in the ground in the pasture by a shelving or jutting rock; from thence the line runs north seven degrees west to Forest River, near which another stone was placed in the ground on the south side of the road, at the bottom of Legg's Hill, so called.

PERAMBULATIONS.

Perambulation of boundary line every five years. R. S. 15, § 2.

6. There shall be a perambulation of the boundary lines between towns,[1] and the lines shall be run and the marks renewed, once in every five years, by two or more of the selectmen of each town[2], or such substitutes as they shall in writing appoint for that purpose; and the proceedings in the case, after every such renewal, shall be recorded in the town records of the respective towns.[3]

7. The mayor and aldermen of Salem and the se-

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1 The word "town" in the Revised Statutes, may be construed to include cities. R. S. c. 2, § 6, clause 17.

2 See note 2, page 27 *ante*.

3 For other general provisions respecting the boundaries of and the perambulation of the same, see Rev. Stat. ch. 15, §§ 1—7.

lectmen of Danvers, on the seventeenth day of September, 1850, made a perambulation of the line between Salem and Danvers, pursuant to the Revised Statutes, and ran the line, and renewed the bound marks between the city of Salem and the town of Danvers, as follows: "Beginning on the road leading from Danvers to Boston, where the cities of Salem and Lynn and the town of Danvers meet, at a stone marked S. L. D.; thence running on the westerly and northerly side of the road to the two stone bridges by Butts Brook, so called, on the northerly side of which, between said bridges, we found a stone marked S. for Salem and D. for Danvers; thence crossing the road at right angles, and running on the easterly and southerly side, to a stone in the angle of the east side of Aborn street, the top of which is level with the road, and marked as above; thence to a stone in the ground on the east side of Aborn street, the centre of which is fourteen and a half feet from the westerly corner of the house of the late Jonathan Smothers; thence northeasterly to a point on the west side of Boston street, where we found a stone marked as above, the centre of which is placed two feet from the northerly corner of the brick store of William Sutton; thence on the southerly and easterly side of the road leading to Salem, to a point which is thirty-six feet southerly of the southeasterly corner of the house of Charles A. Dearborn; thence at right angles with Boston street, in a course north thirty-nine degrees east to the south side of the North River, where we found a stone; thence to the centre of the channel of the river, opposite this point; thence northwesterly by the channel of the river to a point directly opposite the westerly bounds of Harmony Grove Cemetery, where we found a stone, on the easterly side of said river; thence by the westerly bounds of said cemetery north forty degrees fifteen minutes east, about sixty rods to the northwesterly corner of said cemetery, where we found another stone; thence by the

Perambulation of line between Salem and Danvers. City records, Sept 17, 1850.

northeasterly bounds of the cemetery in a course south fifty-seven degrees thirty minutes east, about eighty-three rods, to a bound stone in the wall, at the northwesterly corner of the field owned by Ichabod Nichols and against said cemetery; thence by the wall on the westerly side of said field and across Dark Lane, so called, north forty-three degrees east about sixty-two rods eight links to a bound stone in the field of Jonas Harrington; thence northeasterly on a straight line to the westerly side of the road leading from Salem to the "New Mills," in Danvers, where we found another stone; thence on a straight line to the Thatch Bank, at Porter's Neck, so called, where we found another stone. All the above mentioned bound stones being marked S. for Salem and D. for Danvers."

Perambulation of line between Salem and Lynn. City records, Sept. 17, 1850.

8. The line between Salem and Lynn was perambulated the same day by the mayor and aldermen of Salem and Lynn, as follows:—"Beginning at the beach at the south-east extremity of Lynn, we found a stone placed in the ground about sixty-nine feet seven inches from a run of water near the southern termination of the bounds of Salem and Marblehead: from which stone running north sixty-six degrees west we found in the road leading from Marblehead to Lynn Beach a stone marked S. for Salem and L. for Lynn, near the house of George Phillips: then continuing on the same course, on the road leading from Marblehead to Lynn, we found another stone marked as above: then continuing the same course to Salem Turnpike road, there we found another stone on the westerly side of the road marked with similar letters. Continuing the same course the line meets the Spring Pond, so called, east of the Mineral Spring; crossing the pond and passing the pasture on the same course we found on the Old Boston Road, so called, a stone placed at the point where the cities of Salem and Lynn and the town of Danvers meet marked S. for Salem, L. for Lynn, and D. for Danvers."

9. The line between Salem and Marblehead was perambulated on the same day by the mayor and aldermen of Salem and the selectmen of Marblehead, as follows: to wit—"Beginning near Forest River at the bottom of Legg's Hill, where we found a stone marked S. for Salem and M. for Marblehead, on the south side of the road: thence running south seven degrees east to a shelving rock where we found another stone marked as above in a pasture: thence rnnning south twenty-six degrees west on the west side of the travelled road, we found another stone, marked as above, two poles east of the true bounds near Silver Hole: from thence running across the pasture of John T. Hooper, south fifty-three degrees west, we found another stone marked as above on the north side of the road leading to Lynn, and which is three rods and eight links south of the true bounds; then running south-easterly seventy-nine poles, we found another stone marked as above, near the house of John Hooper: thence running to the road leading from Marblehead to Lynn Beach, on the easterly side of the road, we found another stone marked as above: from thence in the same course to the sea-side we found another stone marked as above, in a run of water standing in a wall."

Perambulation of lines between Salem and Marblehead. City records, Sept. 17, 1850.

BRIDGES.

ORDINANCES.

1. Draws of North and South bridges, when to be hoisted. Penalty.
2. But one vessel shall pass through at one time.
3. Appointment of superintendent of North bridge.
[4.] Appointment of a superintendent of Union street bridge.
[5.] Duties of superintendent.
[6.] Regulations for passage of vessels. Penalty.
[7.] Road passengers not to be obstructed.
[8.] Penalty for injuring or interfering with the bridge or piers.

An Ordinance to regulate the passage of vessels through the draws of North and South River Bridges.[1]

Be it ordained by the city council of the city of Salem, as follows:

Draws of N. and S. bridges, when to be hoisted. Oct. 22, 1838.

SECT. 1. In all cases of the passing of vessels through the draws of either of the bridges of North and South Rivers, the said draws shall not be hoisted, at any time, when in the opinion of the superintendent (whose appointment is herein after provided for) they cannot pass through the same without grounding. And in no instance shall said draws be hoisted, until a sufficient warp or warps are passed, and every precaution adopted, for the speedy passage of every vessel or vessels, for which the said draws are to be hoisted.

Penalty.

Any person who shall attempt to pass said draws at any other time, or in any other manner than is provided for in this section, shall be subject to a fine of not less than five nor more than twenty dollars.

But one vessel shall pass through at one time.

SECT. 2. Not more than one vessel shall be suffered to pass through the draw of either of said bridges, at any one time of hoisting, if by so doing, passengers shall be obstructed in passing over the same.

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[1] Passed Oct. 22, 1838.

SECT. 3. The mayor and aldermen of the city of Salem shall annually appoint some discreet person or persons, with such reasonable compensation for services rendered, as shall be agreed on, whose duty it shall be to have the care and superintendence of said bridges, and who shall have authority to give all necessary directions for the passing of vessels through the draws of said bridges, subject, however, to such instructions in relation to said duty as he shall receive from the mayor and aldermen. Appointment of superintendent.

An Ordinance providing for the appointment of a superintendent of the Union Street Bridge, and prescribing the duties of such officer, and also regulating the passage of vessels through the draw thereof.[1]

Be it ordained by the city council of the city of Salem, as follows, viz:

[4]—SECT. 1. That as soon as may be after the passage of this ordinance, and afterwards in the months of March or April annually, there shall be appointed by the mayor and aldermen, an able and discreet person, to be styled the superintendent of the Union Street bridge, who shall continue in office until a successor be appointed, but who shall be removable at all times by said mayor and aldermen; and who shall receive such compensation for his services as they may authorize and establish. In case of said office becoming vacant, from any cause, a successor shall be appointed as soon as may be after said vacancy shall occur, in the manner above prescribed. Appointment of a superintendent of Union street bridge. Jan. 24, 1848.

[5] SECT. 2. It shall be the duty of the superintendent to take charge of the said bridge by night and by day; to cause the draw thereof to be opened at all Duties of superintendent.

[1] Passed January 24, 1848.

times when required, for the free passage of vessels that he shall think proper, and cause the same to be closed forthwith, using his discretion as to the number of vessels to be permitted to pass prior to the closing of said draw—and said superintendent shall take care of the bridge, piers, and all other parts and parcels of said bridge, and all the appurtenances thereto—see that they are in a safe and satisfactory condition, and the railing and planks in good order, subject at all times to the direction of the mayor and aldermen, relative to the above prescribed duties, or to others which may be prescribed, respecting said bridge and piers.

Regulations for passage of vessels.

[6]—SECT. 3. In all cases of the passing of vessels through the draw of the Union steet bridge, the said draw shall not be hoisted at any time when, in the opinion of the superintendent, said vessels cannot pass through without grounding; and in no case shall said draw be hoisted, until the vessel, intending to pass through the same, is made fast to one of the piers at said draw, with a sufficient warp or warps, as the superintendent shall direct, passed through the same, and every other precaution taken and adopted, that said superintendent shall require, for the speedy passage of any vessel or vessels for which said draw shall be hoisted. Any person or persons who shall hoist said draw, or shall attempt to pass through said draw with any vessel or vessels, at any other time, or in any other manner, than is provided for in this section, shall be subject to a fine of not less than five, nor more than twenty dollars.

Penalty.

Passengers not to be obstructed.

[7]—SECT. 4. Not more than one vessel shall pass through said draw at any one time of hoisting, if by so doing passengers shall be obstructed in passing over the said bridge, unless the superintendent shall otherwise direct.

Penalty for injuring or interfering with the bridge or piers.

[8]—SECT. 5. Any person or persons who shall deface, break, or injure said bridge or piers, or who

shall in any way obstruct the passage of said draw, or the opening or closing of the same, or who shall hoist said draw, or in any matter whatever, without the consent and knowledge of the superintendent, interfere therewith, shall be liable to a fine of not less than five, or more than twenty dollars.

BUILDINGS.

STATUTES.

1. Sailmakers and livery stables to be licensed by mayor and aldermen.
2. City council may make rules respecting balustrades. Proviso.
3. Malicious injury to buildings or vessels by explosion of gunpowder, &c., how punished.
4. Maliciously exploding gunpowder &c., with intent to injure, how punished.
5. Malicious attempts to deface buildings, or property, how punished.

ORDINANCE.

1. No building shall be removed or carried through any street, without permission in writing. Permission shall not be given if it shall be necessary to mutilate or destroy any tree. Penalty.
2. Repealing clause.

STATUTES.

Sailmakers &c. to be licensed by mayor and aldermen.

R. S. 58, § 4.

1. If any person shall occupy or use any building whatever in any maritime town[1] for the business or employment of a sailmaker or rigger, or keeper of a livery stable, except in such parts of the town as the selectmen[2] thereof shall direct he shall forfeit a sum not exceeding fifty dollars, for every month during which

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1. The word "town" in the Revised Statutes may be construed to include cities. Rev. Stat. c. 2, § 6, clause 17.

2. The city charter § 8 vests this power in the mayor and aldermen.

he shall so occupy or use such building, and in the like proportion for a longer or shorter time.

City council may make rules respecting balustrades. 1848, 278.

2. The city council of any city, in this commonwealth, shall have power, from time to time, to make and adopt such rules and regulations, for the erection and maintenance of balustrades, or other projections, upon the roofs or sides of buildings in such city, as, in their judgment, the safety of the citizens may require. And the city council of any city may annex penalties, for the violation of any such rules and orders, not exceeding twenty dollars in any one instance; which penalties may be recovered, for the use of the city, by complaint before the police court of such city, or any justice of the peace in a city where no police court is established: *provided*, that no such rule or order shall take effect, or go into operation, until the same shall have been published at least sixty days in some newspaper printed in such city, or the county within which such city is included.

Proviso.

Malicious injury to buildings or vessels by explosion of gunpowder &c. how punished. 1851, 129 §1.

3. Every person who shall wilfully and maliciously, by the explosion of gunpowder, or any other explosive substance, unlawfully destroy or injure any dwelling-house, office, shop, or other building, or any vessel, within the body of any county, shall be punished by imprisonment in the state prison not more than twenty years, or by imprisonment in the county jail, or house of correction, not more than five years, or by fine not exceeding one thousand dollars.

Maliciously exploding gunpowder, &c. with intent to injure, how punished. Ibid. §2.

4. Every person who shall wilfully and maliciously throw into, against or upon any dwelling-house, office, shop, or other building, or any vessel, within the body of any county, or shall put, or place, or explode, or cause to be exploded in, upon or near such dwelling house, office, shop, building or vessel, any gunpowder or other explosive substance, or any bombshell, torpedo, or other instrument, filled, or loaded with any explosive substance, with intent unlawfully to destroy or

injure such dwelling house, office, shop, building, or vessel, or any person or property therein, shall be punished by imprisonment in the state prison not more than ten years, or in the county jail, or house of correction, not more than five years, or by fine not exceeding five hundred dollars.

Malicious attempt to deface buildings or property, how punished.

5. Every person who shall wilfully and maliciously throw into, against or upon any dwelling-house, office, shop, or other building, or any vessel, within the body of any county, or shall put or place therein or thereon any oil of vitriol, coal-tar, or any other noxious or filthy substance, with intent unlawfully to injure, deface or defile such dwelling-house, office, shop, building, or vessel, or any property therein, shall be punished by imprisonment in the state prison not more than five years, or in the county jail, or house of correction, not more than three years, or by fine not exceeding three hundred dollars.

Ibid, § 3.

An Ordinance to amend an Ordinance passed August 11, 1836, entitled "An Ordinance to prevent unlawful and injurious practices in the streets and other public places of the city."[1]

Be it ordained by the city council of the city of Salem, as follows:

No building shall be removed or carried through any street, &c., without permission in writing. Sept. 13, 1852.

SECT. 1. No person or persons shall remove or cause to be removed and carried, or assist in removing or carrying through any part of any street, lane, alley or other public highway, or place, in the city, any house, shop or other building, either in parts or a whole, without permission of the city council first had and obtained in writing, and under such restrictions and limitations as they may deem expedient. And in no case shall per-

1. Passed Sept. 13, 1852.

Permission shall not be given if it shall be necessary to mutilate or destroy any tree. Penalty.

mission be given to remove any building, when to effect such removal it shall be necessary to mutilate or destroy any tree. Whoever shall offend against any provision of this section shall forfeit and pay for each offence, a sum not less than five nor more than twenty dollars.

Repealing clause.

SECT. 2. Section fifteenth of the Ordinance, number twelve, passed August 11, 1836, is hereby repealed.

CARRIAGES.

STATUTES.

1. Travellers to take the right hand side of road, &c.
2. Bells to be used with sleighs.
3. Penalties, and how to be recovered.
4. Drivers of stage coaches, &c., not to leave their horses, without, &c.
5. Mayor and aldermen may adopt rules and orders for the regulation of carriages. Proviso.
6. Penalties.
7. Fee for license.

Travellers to take the right hand side of roads, &c. R. S. 51, § 1. 1 Pick. 345. 4 Pick. 125. 23 Pick. 201. 8 Metc. 213. 11 Metc. 403.

1. Whenever any persons shall meet each other on any bridge or road, travelling with carriages, wagons, carts, sleds, sleighs or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that the respective carriages or other vehicles aforesaid may pass each other without interference.

Bells to be used with sleighs. R. S. 51, § 2.

2. No person shall travel on any bridge or road, with any sleigh or sled drawn by one or more horses, unless there shall be at least three bells attached to some part of the harness thereof.

Penalties, and how to be recovered. Ibid, § 3.

3. Every person, offending against the provisions of the two preceding sections, shall for each offence forfeit a sum not exceeding twenty dollars, to be recovered on

complaint before any justice of the peace, in the county where the offence shall have been committed; and he shall further be liable to any party for all damages sustained by reason of such offence; provided, that every such complaint shall be made within three months after the offence shall have been committed, and that every such action for damages shall be commenced within twelve months, after the cause of action shall have accrued.

Drivers of stage coaches, &c., not to leave their horses, without, &c. Ibid, § 4.

4. If any driver of a stage coach, or other vehicle, for the conveyance of passengers for hire, shall, when any passenger is within or upon such coach or vehicle, leave the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment not exceeding two months or by fine not exceeding fifty dollars.

Mayor and aldermen may adopt rules and orders for the regulation of carriages. 1847, 224, § 1

5. The mayor and aldermen of any city in this commonwealth shall have power from time to time, to make and adopt such rules and orders, as to them shall appear necessary and expedient, for the due regulation, in such city, of omnibuses, stages, hackney coaches, wagons, carts, drays, and all other carriages and vehicles whatsoever, used or employed, wholly or in part, in such city, whether by prescribing their routes and places of standing, or in any other manner whatsoever; and whether such carriages and other vehicles as aforesaid are used for burden or pleasure, or for the conveyance of passengers or freight, or otherwise, and whether with or without horse or other animal power; *provided*, that nothing contained in this act shall be construed to abridge or impair the rights of cities to make such by-laws and regulations, touching the subjects above provided for, as they now possess, by virtue of their charters, or the amendments thereof.

Proviso.

Penalties. 1847, 224, § 2.

6. The mayor and aldermen of any city may annex penalties for the violation of any such rules and orders

as are authorized in the preceding section, not exceeding twenty dollars in any one instance; which penalties may be recovered for the use of the city, by complaint before the police court of such city, or any justice of the peace in a city where no police court is established:

Rules, &c., to be published.

provided, that no such rule or order shall take effect, or go into operation, until the same shall have been published at least one week in some newspaper printed in such city or the county within which such city is included.

Fee for license. 1850, 275.

7. The mayor and aldermen are authorized to demand and receive the sum of one dollar, and no more, for a license to any person to set up and use within the city, any carriage or vehicle mentioned in the two preceding sections.

CITY CLERK.

ORDINANCES.

1. City clerk how chosen. To be sworn.
2. Tenure of office and compensation.
3. Powers and duties.
4. City clerk shall attend general meetings of citizens, &c.
5. Clerk of board of aldermen.—Clerk of school committee and board of firewards. Records of the several boards to be kept. Record to be completed on the day after the meeting. All papers deposited with the clerk to be preserved, &c.
6. City clerk to receive all demands against the city. Incorrect accounts to be returned. Accounts to be laid before the board to which they appertain, for examination and approval, once in a month. Schedule of accounts to be prepared and presented to the joint standing committee of accounts.

[7] City clerk to be clerk of the overseers of the poor.

[8] City clerk to make out all accounts against persons indebted to the city, and deliver the same to the city treasurer, &c.

[9] Repealing clause.

An Ordinance providing for the election of a city clerk, and defining his powers and duties.[1]

Be it ordained by the city council of the city of Salem, as follows:

City clerk, how chosen. June 10, 1839.

SECT. 1. The city clerk shall be chosen by ballot in convention of the two boards of the city council, at the first meeting in each municipal year. He shall be sworn to the faithful discharge of the duties of his office by the mayor, or a justice of the peace, and a certificate of the administration of the oath, signed by the mayor, or the justice of the peace so administering the oath, shall be entered upon the records of the mayor and aldermen.

To be sworn.

Tenure of office and compensation.

SECT. 2. The city clerk shall hold his office for one year, and until another is chosen in his stead, and shall receive such compensation for his services, as shall be annually determined by the city council, by ordinance or otherwise.

Powers and duties

SECT. 3. The city clerk shall exercise all the powers and perform all the duties, which by the laws of the commonwealth, town clerks are required to exercise and perform, so far as the same may not be affected by the provisions of the city charter, and the ordinances passed in conformity thereto; and he shall also exercise all such other powers, and perform all such other duties, as may be conferred or enjoined by the charter and ordinances aforesaid.

City clerk shall attend general meetings of citizens, &c.

SECT. 4. The city clerk shall attend all general meetings of citizens, which may be had by virtue of warrants issued by the mayor and aldermen, and he shall open such meeting by reading the warrant therefor, and shall continue to preside thereat until a moderator is chosen. He shall keep in a separate book a record of the proceedings of such meetings, and shall insert in the

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1 Passed June 10, 1839.

record, copies of all reports or other documents, upon which said proceedings may have been founded.

Clerk of board of aldermen.

SECT. 5. The city clerk shall be clerk of the board of aldermen, and shall keep a record of their proceedings, and prepare all notices, warrants, certificates and other papers which they may direct to be prepared, and generally perform all such duties pertaining to his office, as they may prescribe. He shall also be clerk of the school committee, and of the board of firewards, and keep a record of their proceedings, and perform such other duties in connection therewith as they may respectively prescribe. The records of the several boards, shall be kept in separate books, and shall at all times, (except during the meetings of the boards) remain in the office of the clerk, who shall be responsible for their safe keeping. All votes, resolutions, or other acts of the several boards shall be recorded with exactness, and all reports, or other documents which the boards may deem of importance, shall be entered in full upon the records. Each record shall be furnished with marginal references and an alphabetical index; the record of every meeting shall be completed upon the day succeeding that on which the meeting was held; and at each meeting of every board, the clerk shall produce its record book, for the inspection of the members. All papers deposited with the clerk by the several boards, or which may be otherwise received at his office, shall be carefully preserved; and for this purpose shall be regularly arranged in separate files, folded of uniform size, and neatly and methodically labelled or endorsed in such a manner as to indicate the contents of each paper.

Clerk of school committee and board of firewards.

Records of the several boards to be kept.

Record to be completed on the day after the meeting.

All papers deposited with the clerk to be preserved, &c.

City clerk to receive all demands against the city.

SECT. 6. The city clerk shall receive all accounts from persons having demands against the city, under the appropriations respectively entrusted to the control of the mayor and aldermen, the school committee, and the board of firewards, and shall examine the same in detail, see that they be correctly cast, and that separate

accounts have been prepared of such charges as appertain to different boards; and he shall correct, or return for correction to the persons presenting them, all such accounts as he may find to be erroneous in either of these respects. He shall then once in a month, or as much oftener as he may be directed, lay the said accounts before the boards to which they respectively appertain, for their examination and approval, which shall be attested by the official signatures of the presiding officers of the several boards duly endorsed upon the said accounts. He shall next enter a brief statement of the accounts thus approved, in books prepared for the purpose, a separate book to be kept for each board, and to be laid before the board, whenever accounts are to be acted upon. He shall also prepare a schedule of the accounts thus approved by the aforesaid boards, and also of such other accounts as may have been approved by the overseers of the poor, (which latter accounts duly certified as approved, the overseers of the poor are hereby directed to cause to be delivered to the city clerk) and shall present such schedule, together with all the accounts, regularly folded, filed and endorsed, to the joint standing committee of accounts, under whose direction he shall perform all such other duties, as a clerk or auditor, which they may see fit to prescribe.

Incorrect accounts to be returned.

Accounts to be laid before the board to which they appertain for examination and approval, once in a month.

Schedule of accounts to be prepared and presented to joint standing committee of accounts.

An Ordinance extending the powers and duties of the city clerk.[1]

Be it ordained by the city council of the city of Salem, as follows:

[7] SECT. 1. The city clerk shall be clerk of the overseers of the poor, and shall perform all the duties in

City clerk to be clerk of the overseers of the poor. May 3, 1841.

[1] Passed May 3, 1841.

connection with that department, which by the provisions of the twenty-ninth ordinance are specifically enjoined upon him by virtue of his connection, as thereby established, with the mayor and aldermen, school comittee and board of firewards.

City clerk to make out all accounts against persons indebted to the city and deliver the same to the city treasurer, &c.

[8] SECT. 2. It shall be the duty of the city clerk, under the direction of the several departments with which he is officially connected, to make out all accounts against persons indebted to the city, and as soon as may be to deliver the same to the city treasurer for collection. In every case the city clerk shall obtain from the city treasurer a certificate showing what accounts have been thus delivered, and shall submit such certificate to the committee on accounts at their next meeting, and under their direction shall enter an abstract thereof in a book kept for that purpose.

Repealing clause.

[9] SECT. 3. So much of the twenty-ninth ordinance as conflicts with the provisions of this ordinance is hereby repealed.

CONSTABLES.

STATUTES.

1. Mayor and aldermen to appoint constables.
2. Constables may serve writs of replevin where the value of the property and in other personal actions where damages do not exceed $100.
3. No constable competent to serve civil process until he has given bond.

Mayor and aldermen to appoint constables. 1836, 42 § 8.

1. By the eighth section of the city charter, the mayor and aldermen have full and exclusive power to appoint constables and may remove the same when in their opinion sufficient cause for removal exists.

2. Any constable, who shall have been duly appointed for any city or chosen for any town of this Commonwealth, and who shall have given bonds in the manner hereinafter set forth, may serve, within his own city or town, any writ, or other process, in any personal action, in which the damages shall not be laid at a greater sum than one hundred dollars, and also any process of replevin in which the subject matter shall not exceed in value one hundred dollars.

Constables may serve writs in replevin where the value of property, and in other personal actions, where damages do not exceed $100. 1851, 91 § 1. 13 Metc. 303.

3. No constable shall be competent to serve any writ or execution, in any civil action, until he shall have given to the city or the inhabitants of the town, for which he may have been appointed or chosen, a bond with sureties, to the satisfaction of the mayor and aldermen of the city, or the selectmen of the town, in a sum not less than five hundred dollars, with condition for the faithful performance of his duties, as constable, in the service of all civil processes which may be committed to him, and shall have caused the same, with the requisite approval certified thereon, to be filed in the office of the clerk of such city or town; and it shall be the duty of the said clerk to note upon the bond the time when the same was so filed; and the like proceedings and remedies may be had upon any such bond as are provided by an act, passed on the twenty-fourth day of February, in the year one thousand eight hundred and forty-five, requiring constables to give bonds in certain cases.[1]

No constable competent to serve civil process until he has given bond. Ibid, § 2.

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[1] For general provisions respecting constables, see Rev. Stat. c. 15. §§ 33, 66—80: stat. 1842 c. 37; 1845 c. 70, and 1847 c. 98.

DOGS.

STATUTES.

1. City council may make by-laws respecting the keeping of dogs.
2. Fees for licenses, to be paid to the treasurer.
3. Dogs to have collars, with names, &c. of owners.
4. Double damages for injury done by dogs.
5. Any person may kill any dog, when, &c.
6. Dangerous dogs, to be confined by owner, or killed.
7. If owner neglects, after notice, any person may kill his dog.
8. Owner liable to treble damages, in case, &c.

ORDINANCE.

1. No dog permitted to go at large without license.
2. City marshal shall grant licenses. Fee for same.
3. Marshal to keep record of same, make quarterly reports, and pay over moneys.
4. Dogs going at large to wear collars.
5. City marshal to cause dogs at large, without collars, to be destroyed.
6. Proceedings in case any dog shall disturb the quiet of any person, by barking, &c. Proviso.
7. Penalty.

STATUTES.

City council may make by-laws respecting the keeping of dogs. R. S. 58, § 10. 1850, 245. R. S. 2, § 6.

1. The city council of any city in this Commonwealth may make such by-laws, concerning the licensing, regulating and restraining of dogs, going at large, as they shall deem expedient, and may affix any penalties, not exceeding ten dollars, for any breach thereof; *provided*, that no such by-law shall extend to any dog, not owned or kept in such city, and that no person shall be obliged to pay more than two dollars, annually, for any license granted under the provisions of this section.[1]

Fees for licenses, to be paid to the treasurer. R. S. 58, § 11. Ibid, 2, § 6.

2. All money received for the several licenses mentioned in the preceding section, in any city, shall be paid to the treasurer for the use of the city.

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[1] A by-law of a town, made under this section, will be construed to apply only to dogs owned or kept in the town, although, in its terms, it applies to "any person permitting his dog to go at large within the town"; and if it is otherwise valid, it may be enforced against the owner or keeper of a dog within the town. *Commonwealth v. Dow*, (10 Metc. 382.) *Commonwealth v. Chase*, (6 Cushing 248.)

3. Every person who shall keep or own any dog, shall cause to be constantly kept, about the neck of such dog, a collar, with the name and place of residence of such owner or keeper legibly marked on the same, and any person may kill any dog, being without a collar as aforesaid.[1]

Dogs to have collars, with names, &c. of owners. R. S. 58. § 12.

4. Every owner or keeper of any dog shall forfeit, to any person injured by such dog, double the amount of the damage sustained by him, to be recovered in an action of trespass, and in such action, the defendant may plead the general issue, and give any special matter in evidence, in excuse or justification.

Double damages for injury done by dogs. Ibid, § 13.

5. Any person may kill any dog, that shall suddenly assault him, while he is peaceably walking or riding, any where out of the enclosure of the owner or keeper of such dog; and any person may kill any dog, that shall be found out of the enclosure or immediate care of its owner or keeper, worrying, wounding or killing any neat cattle, sheep or lambs.

Any person may kill any dog, when, &c. 13 Johns. R. 312. 4 Cowen 351. Ibid, § 14.

6. If any person shall be assaulted by any dog, in manner as aforesaid, or if any dog shall hereafter be found strolling out of the enclosure or immediate care of its owner or keeper, and if such person shall, at any time within forty-eight hours after such an assault, or the finding of such dog strolling as aforesaid, make oath thereof, before any justice of the peace for the county,

Dangerous dogs, to be confined by owner or killed. Ibid. § 15.

[1] A by-law of a town imposed a penalty of $10 on any person permitting his dog to go at large in the town, unless the dog should be licensed to go at large, and should wear a collar with the name of the owner or keeper, and the word "licensed" distinctly marked thereon; and the further penalty of $10, if said dog should wear a collar without license. *Held*, that although the latter part of this section might be repugnant to the Rev. Stat. c. 58, § 12, and therefore void, yet that the former part was valid, and that the penalty thereby imposed was recoverable of a person who permitted his dog to go at large without being licensed. *Commonwealth v. Dow*, (10 Metc. 382.)

The provision in the Rev. Stat. c. 58, § 12, that any person may kill any dog that is without a collar, does not authorize a person to convert such dog to his own use; and trover by the owner will lie for such conversion. *Cummings v. Perham*, (1 Metc. 555.)

R. S. 2, § 6. or before the clerk of the town or city where the owner of such dog shall dwell, and shall further swear that he suspects such dog to be a dangerous or mischievous dog, and shall give notice thereof to such owner or keeper, by delivering him a certificate of such oath, signed by such justice or clerk, the owner or keeper of such dog shall forthwith kill or confine the same; and if he shall neglect so to do, for the space of twenty-four hours, after notice is given as aforesaid, he shall forfeit the sum of ten dollars, to be recovered to the use of the town or city, on complaint before any justice of the peace, or, in the county of Suffolk, before the police court for said county.

Ibid. R. S. 87, § 3. 10 Metc. 382.

If owner neglects, after notice, any person may kill his dog. R. S. 58, § 16.

7. If, after such notice, such dog shall not be killed or confined, but shall again be found strolling out of the enclosure or immediate care of its owner or keeper, any person may kill such dog; and in any suit brought therefor, the defendant may plead the general issue and give the special matter in evidence.

Owner liable to treble damages, in case, &c. Ibid, § 17.

8. If any dog, after notice given to the owner or keeper, as before provided, shall, by any sudden assault, in manner as aforesaid, wound or cause to be wounded, any person, or shall worry, wound or kill any neat cattle, sheep or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble damage, to be recovered with costs, by action of debt.

An Ordinance restraining the going at large of dogs within the city of Salem.[1]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. No dog shall be permitted to go at large[2] or loose, in any street, lane, alley, court, or travelled way, or in any unenclosed or public place, in this city, until the owner or keeper of such dog, or the head of the family or the keeper of the house, store, shop, office or other place where such dog is kept or harbored, shall have paid to the city marshal two dollars for a license for such dog to go at large. No dog permitted to go at large without license. Aug. 1, 1853.

SECT. 2. The city marshal shall grant a license to any citizen for his or her dog to run at large, on the payment of two dollars; which license shall expire on the fifteenth day of May next after the same is given. City marshal shall grant licenses. Fees for same.

SECT. 3. The city marshal shall keep a record of all licenses so granted, and shall make an annual report to the city council of all moneys so received; and shall pay over the same to the city treasurer for the use of the city. Marshal to keep record of same, make quarterly reports and pay over moneys.

SECT. 4. Every person who shall keep, harbor, or own any dog going at large or loose as aforesaid, shall cause to be constantly kept about the neck of such dog a collar, with the name and place of residence of such owner or keeper, legibly marked on the outside of the same. Dogs going at large to wear collars.

SECT. 5. It shall be the duty of the city marshal to City marshal to

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[1] Passed August 1, 1853.

[2] A dog is "going at large" in a town, if he be loose and following the person who has charge of him, through the streets of the town, at such a distance that he cannot exercise a control over the dog, which will prevent his doing mischief. *Commonwealth v. Dow*, (10 Metc. 382.)

cause dogs at large, without collars, to be destroyed.

cause all dogs to be destroyed which shall be found at large within the city, without a collar, as required in the fourth section of this ordinance.

Proceedings in case any dog shall disturb the quiet of any person, by barking, &c.

SECT. 6. On complaint being made to the mayor, of any dog within this city which shall, by barking, biting, howling, or in any other way or manner, disturb the quiet of any person or persons whomsoever, the mayor shall issue notice thereof to the person owning, keeping, or permitting such dog to be kept; and in case such person shall neglect to cause such dog to be forthwith removed and kept beyond the limits of the city, or destroyed, he shall forfeit and pay one dollar for every day during which such neglect shall continue after such notice; *provided*, that the justice before whom the complaint respecting such dog shall be heard and tried, shall be satisfied that such dog had in manner aforesaid disturbed the quiet of any person or persons in the said city.

Proviso.

Penalty.

SECT. 7. In case any dog shall be found loose or going at large, contrary to any of the foregoing provisions, the owner or keeper thereof, or the head of the family, or keeper of the house, store, shop, office, or other place where such dog is kept or harbored, shall forfeit and pay a sum not exceeding ten dollars.

ELECTIONS.[1]

ORDINANCE.

1. Form of warrants for ward meetings.
2. To be served by constables, and returned.
3. Form of warrants for general meetings.
4. To be served by constables, and returned.
5. Time of opening and closing the poll shall be fixed by the mayor and aldermen, and inserted in the warrant.
6. Service of warrants.

An Ordinance concerning the form of warrants, and the services and return thereof.[2]

Be it ordained by the city council of the city of Salem, as follows:

Form of warrants for ward meetings. June 9, 1836.

SECT. 1. The form of warrants for calling meetings of the citizens of the several wards, shall be as follows, viz:

L. S City of Salem,

To either of the constables of the City of Salem Greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required, forthwith, to warn the inhabitants of ward No. , qualified as the law directs, to assemble at on the day of at o'clock M. then and there to

Hereof fail not; and have you there then this warrant, with your doings thereon. Witness Mayor of our said City of Salem, the day of in the year of our Lord one thousand eight hundred and

By order of the Mayor and Aldermen.

City Clerk.

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1 For general statutes respecting elections, see Rev. Stat. c. 3, 4, 5, 6, 15; stat. 1839, c. 42, 165; 1840, c. 59, 66; 1841, c. 70; 1842, c. 99; 1843, c. 94; 1844, c. 78, 143, 167; 1845, c. 217; 1848, c. 35, 240; 1851, c. 24, 40, 226; 1852, c. 209, 282, 284; 1853, c. 36. See also, City Charter and Amendments, *ante*.

2 Passed June 9, 1836.

To be served by constables, and returned.

SECT. 2. All warrants for calling meetings of the citizens of the several wards, which shall be issued by the mayor and aldermen, shall be served by any constable of the city, and returned to the wardens of the several wards in said city, on or before the time of meeting of the citizens of said wards, therein specified.

Form of warrants for general meetings.

SECT. 3. The form of warrants for calling meetings of the inhabitants of the said city of Salem, shall be as follows, to wit:

L. S. City of Salem,

To the constables of the City of Salem

Greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required forthwith to warn the inhabitants of the City of Salem, qualified as the law directs, to assemble at on the day of at o'clock, M. then and there to

Hereof fail not; and have you there then this warrant, with your doings thereon. Witness, Mayor of our City of Salem, the day of in the year of our Lord one thousand eight hundred and

By order of the Mayor and Aldermen.

City Clerk.

To be served by constables, and returned.

SECT. 4. All warrants which shall be issued by the mayor and aldermen, for calling meetings of the inhabitants of the city, shall be served by any constable of the city, and returned to the mayor and aldermen on or before the meeting of the citizens therein specified.

Time of opening and closing the poll shall be fixed by the mayor and aldermen, and inserted in the warrant.

SECT. 5. It shall be the duty of the mayor and aldermen to fix the time when the poll shall close, as well as the time for the opening thereof, in the election of all officers, except ward officers, and insert the same in any warrant and notification to the inhabitants, of such election.

Service of warrants.

SECT. 6. The service of warrants of ward meetings shall be made by posting up copies thereof in at least two public places in the ward mentioned in the war-

rant; and the service of warrants for meetings of the inhabitants of said city shall be made by posting up copies thereof in at least one public place in each ward; and it shall be the duty of the city clerk to cause notice of all ward meetings, and meetings of the inhabitants of said city, to be published in all the newspapers that shall be printed in the city, between the time of issuing the warrants and the time appointed for the said meetings.

FINANCE.

ORDINANCES.

1. Joint committee on accounts. Their duty.
2. Claims against the city to be accompanied by certificate that the same are correct.
3. Committee to keep a record of accounts allowed, &c. To make an annual report to city council.
4. No money shall be drawn from the treasury, except on orders drawn by the mayor.
5. When mayor may draw orders on the treasurer. Proviso.
6. All debts due to the city to be delivered to treasurer for collection. Proviso.
7. Treasurer's duties.
8. Committee on accounts to audit treasurer's account.
9. Treasurer to give bond.
[10] Commencement of financial year
[11.] City clerk to give public notice for presentment and payment of accounts.
[12.] When committee on accounts shall audit treasurer's account and report thereon.
[13.] When the several departments shall report their accounts to city council.
[14.] Committee on public property to furnish schedule of public property.

An Ordinance establishing a system of accountability in the expenditures of the city.[1]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. There shall be annually appointed by the Joint committee

1. Passed June 27, 1853.

on accounts. June 27, 1863.

city council, a joint standing committee on accounts, whose duty it shall be to meet once in a month, and as much oftener as they shall deem expedient. It shall

Their duty.

be their duty carefully to examine all accounts, claims, and demands against the city, and certify the same to be correct, when found to be so.

Claims against the city to be accompanied by a certificate that the same are correct.

SECT. 2. All accounts and other claims against the city, for labor done, services performed, or materials of any kind furnished for the use of the city, under the charge, direction or superintendence of the mayor and aldermen, overseers of the poor, or any other board or officer of the city, or by order of the city council, or either branch thereof, shall, when presented to said committee, be accompanied with a certificate of the mayor, the president of the common council, or the proper certifying officer of each department, as the case may be, certifying the same to be correct; otherwise the same shall not be received, nor acted upon by said committee.

Committee to keep a record of accounts allowed, &c.

SECT. 3. Said committee shall keep a book, wherein they shall enter the date and amount of each and every claim they shall allow, the name of the person to whom the same shall be allowed, and designating the fund or appropriation from which the same shall be paid; and they shall annually, on or before the second

To make an annual report to city council.

regular meeting of the city council in January, and whenever requested by the city council, or either branch thereof, report to the city council the whole amount of accounts, claims and demands allowed.

No money shall be drawn from the treasury except on orders drawn by the mayor.

SECT. 4. No money shall be paid out of the city treasury, except on orders drawn and signed by the mayor, designating the fund or appropriation from which said orders are to be paid; and no order for services rendered, or materials furnished for any department, shall be drawn to exceed the sum appropriated by the city council for the expenses of that department.

When the mayor

SECT. 5. The mayor is hereby authorized to draw

orders on the city treasurer for the payment of all accounts, claims and demands allowed by the committee on accounts; and he shall not draw on the city treasurer for the payment of any account, claim or demand, unless the same shall have been allowed by the committee on accounts; *provided*, that in any case where it is necessary for money to be paid in advance, for contracts made, or for work begun but not completed, the mayor, upon being satisfied of such necessity, may draw an order on the city treasurer for the amount thus necessary to be advanced, which order shall be countersigned by the city clerk, who shall enter the same in the schedule of accounts, which he is required to present to the committee on accounts.

may draw orders on the treasurer.

Proviso.

SECT. 6. It shall be the duty of the several departments and officers of the city to cause to be delivered to the city treasurer for collection, all accounts against persons indebted to the city; and no department or officer of the city shall receive payment of any such account, and the receipt of the city treasurer shall be deemed the only sufficient and valid discharge of debts due to the city. *Provided*, that the city marshal and commissioner of streets under the direction of the mayor and aldermen, and the superintendent of the alms house, under the direction of the overseers of the poor, may receive payment for articles sold for cash, in any case in which the amount sold shall not exceed twenty dollars; and in every such case, the money received shall, within one week from the time of payment, be paid to the city treasurer, and his receipt therefor shall be forthwith delivered to the city clerk, to be laid before the committee on accounts.

All debts due to the city to be delivered to treasurer for collection.

Proviso.

SECT. 7. It shall be the duty of the city treasurer and collector to collect and receive all rents which may be due to the city, except for the market house, cellars and appurtenances thereto belonging, and under the direction of the joint committee on public property, to

Treasurer's duties.

seal and execute all necessary leases of city land or buildings. He shall proceed without delay to collect all accounts which may be delivered to him for collection; and in any case in which he is unable to obtain an immediate settlement of an account, he shall report the same to the mayor and aldermen, and follow such directions as they may deem it for the interest of the city to prescribe. The report of the city treasurer, and the directions of the mayor and aldermen in every such case shall be made in writing, and attested copies of the same shall be furnished by the city clerk to the committee on accounts.

Committee on accounts to audit treasurer's account

SECT. 8. It shall be the duty of the committee on accounts to audit the account of the city treasurer at the close of each financial year, and as much oftener as they may deem expedient; and for this purpose they shall have access to all books and vouchers in his possession, or in the possession of the city clerk, or any other officer of the city; and they shall in every case report to the city council the result of their examination.

Treasurer to give bond.

SECT. 9. The city treasurer and collector shall give bond, with sufficient sureties, to the satisfaction of the mayor and aldermen, for the faithful performance of the duties of the said office of treasurer and collector, and that he will truly and justly account for all moneys that may come into his hands.

An Ordinance establishing the fiscal year of the city.[1]

Be it ordained by the city council of the city of Salem, as follows:

[10.] SECT. 1. The city treasurer shall make up his

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[1] Passed December 13, 1852.

annual accounts to the thirty-first day of December; and the financial year of the city shall begin on the first day of January and end on the thirty-first day of December in each year.

Commencement of financial year. Dec. 13, 1852.

[11.] SECT. 2. It shall be the duty of the city clerk on or before the fifteenth day of December in each year, to give notice by advertisement in the newspapers, that all accounts against the city are required to be presented and all sums due the city to be paid, on or before the thirty-first day of December.

City clerk to give public notice for presentment and payment of accounts.

[12.] SECT. 3. It shall be the duty of the joint standing committee on accounts to audit the account of the city treasurer for the fiscal year, and to report thereon to the city council, at its second regular meeting in January.

When committee on accounts shall audit treasurer's account and report thereon.

[13.] SECT. 4. It shall be the duty of the several departments of the city administration, to report their accounts for the preceding fiscal year to the city council, at its second regular meeting in January.

When the several departments shall report their accounts to city council.

[14.] SECT. 5. It shall be the duty of the committee on public property to furnish the city council, on the second regular meeting in January, a statement in detail of public property.

Committee on public property to furnish schedule of public property.

FIRE.

STATUTES.

1. City council to select board of seven engineers, from the firewards, and they may select a chief engineer.
2. Board of engineers to exercise the powers of firewards.
3. Board of engineers to control and direct other firewards. Firewards may be dismissed by city council for insubordination, and their places supplied.
4. Removal of firewards, & appointment of others by city council.

5. Enginemen to be appointed.
6. Number of enginemen that may be appointed. Companies may be organized, and rules established.
7. Firewards to have the care of pumps, engines, &c.
8. Penalty for wanton injury to pumps, engines, &c.
9. Enginemen who have served one year to have an allowance equal to their poll tax.
10. Firewards shall attend fires.
11. Firewards, &c., may order buildings to be pulled down, &c.
12. Firewards, &c., may command assistance.
13. Firewards may give orders to enginemen, and others, &c.
14. Owners of buildings, &c., pulled down to be indemnified, except, &c.
15. Embezzling, &c., of property at a fire to be deemed larceny.
16. Penalty for making bonfires.
17. Penalty for false alarms of fire.
18. Power to regulate the keeping of gun cotton and other like substances.
19. City council, &c., may make rules in relation to storage and sale of camphene.
20. Penalty for having or selling rockets, &c., without license.
21. Penalty for having or setting fire to rockets, &c.
22. City council may order how gunpowder shall be kept.
23. Warrant may be issued for searching places where gunpowder is suspected to be kept.
24. Penalty for unlawfully keeping gunpowder.

ORDINANCES.

1. Penalty for making bonfires. Proviso.
2. Smiths and other trades to be licensed. Penalty. Gravers to be licensed. Penalty. Firing casks; steaming lumber. Penalty.
3. Ashes not to be kept in wooden vessels.
4. Gunpowder not to be kept within the limits of the city, unless. Penalty.
5. Fire ladders not to be taken from their place of deposit. Penalty.
6. Penalty for carrying fire through streets, &c.
7. Penalty for having lighted pipes &c., in ropewalks, &c.
8. Defective chimneys. Penalty for not repairing after notice. Mayor and aldermen may cause defective chimneys to be taken down, &c.
9. Chimneys taking fire. Penalty. Proviso. When chimneys may be fired. Penalty. Chimney sweepers. Penalty.
10. Stove funnels and stoves regulated. Penalty.
11. Complaint to be made within six months.
[12.] Election of firewards.
[13.] Board of engineers chosen and their powers.
[14.] Penalty for smoking in the streets, &c.
[15.] Repealing clause.

STATUTES.

City council to select board of seven engineers from the firewards, and they may select a chief engineer.

1. The city council of the city of Salem may annually select seven of the firewards chosen by said city, who shall constitute a board of engineers of the fire department; and said board shall select one of said

number as chief engineer of the fire department. 1845, 58 § 1.

2. Said board of engineers shall have all the powers, and exercise all the authority, which firewards by the laws of the Commonwealth, and by an act passed on the sixteenth day of June in the year one thousand eight hundred and twenty seven, providing for the appointment of enginemen in the town of Salem, now possess, and are authorized to exercise.

Board of engineers to exercise the powers of firewards. Ibid, § 2. 1827, 13. R. S. 18.

3. Said board of engineers shall have control and direction of all other firewards who may be appointed by said city council, and if any fireward shall neglect or refuse to obey any orders given him by any of said board of engineers, or neglect or refuse to perform any service which may be assigned to him by any of said board, in the regular performance of their duties, the city council may dismiss and remove the fireward so offending and appoint another in his place.

Board of engineers to control and direct other firewards. Ibid, § 3.

Firewards may be dismissed by city council for insubordination, &c., and their places supplied.

4. The said city council may, at any time, dismiss and remove any of the firewards and appoint others in their places.

Removal of firewards and appointment of others by city council. Ibid, § 4.

5. The firewards[1] of the town of Salem are authorized and required to exercise all the powers, and to perform all the duties, in relation to the nomination and appointment of enginemen, which the selectmen of the town of Salem have been heretofore authorized and required to exercise and perform, and enginemen appointed by the said firewards shall be subject to the same duties and entitled to the same privileges and exemptions as enginemen heretofore appointed by the said selectmen.

Enginemen to be appointed. 1827, 13 § 1. 1785, 42. 1805, 82. 1808, 25 1809, 108.

6. The said firewards[1] are authorized, if they shall judge it expedient, to nominate and appoint any number of enginemen, in addition to the number authorized by law, not exceeding in the whole sixty men for each and every engine, four men for each hose carriage,

Number of enginemen that may be appointed 1827, 13 § 2. 1834, 16.

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[1] See act of 1845 c. 58, § 2 *ante*.

twenty men for each sail carriage, twenty men to be employed as a hook and ladder company, and twenty-five men to be employed as a hose company. And the said enginemen are authorized to organize themselves into distinct companies, under the direction of the firewards, to elect directors, clerks, and other officers, to establish such rules and regulations as may be approved by the firewards, and to annex penalties to the same, which may be recovered by the clerk of any company, so organized, before any justice of the peace in the county of Essex;[1] *provided*, that no penalty shall exceed the sum of ten dollars, and that such rules and regulations shall not be repugnant to the constitution and laws of this Commonwealth.

Companies may be organized, and rules established. 1827, 13 § 2.

1853, 57 § 10.

Firewards to have the care of pumps, engines, &c. 1845, 58 § 2. 1827, 13 § 3.

7. The said firewards shall have the care and superintendance of the public pumps and cisterns, and also of the public engines, hose and sail carriages, fire hooks and ladders, together with the fixtures and appendages thereto belonging; and shall cause the same to be kept in good repair, and may, from time to time, make such alterations and improvements therein as they shall deem expedient.[2]

Penalty for wanton injury to pumps, engines, &c. 1827, 13 § 5. R. S., 18 § 23.

8. If any person shall, within the city of Salem, wantonly or maliciously spoil, break, injure, damage, or render useless, any pump or cistern, or any engine, hose carriage, or sail carriage, or any fixture or appendage thereto belonging, and shall be convicted thereof before the supreme judicial court, he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment, not exceeding two years, at the discretion of the court, and be further ordered to recognize, with

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1 The police court has exclusive jurisdiction by statute of 1853, c. 57, § 10. See Police Court.

2 Section 4 of the statute of 1827 c. 13, was in effect repealed by the statute of 1845 c. 58, § 5, which repealed all acts and parts of acts inconsistent with said act.

sufficient surety or sureties, for his good behavior for such term as the court shall order.

Enginemen who have served one year to have an allowance equal to their poll tax. R. S., c. 18 § 19. 1839, c. 46 § 3.

9. All persons duly appointed enginemen for any fire engine, and all persons duly appointed members of the fire department established in any town, and who shall have done duty as such for the space of one year first preceding the first day of April[1] in each year, shall be entitled to receive from the treasurer of their respective towns, a sum equal to the poll tax to the state, county and town, (exclusive of highway taxes) which may have been paid by such persons, or by their parents, masters, or guardians.[2]

GENERAL PROVISIONS.

Firewards shall attend fires. R. S. 18, § 3.

10. When a fire shall break out it shall be the duty of the firewards immediately to repair to the place of such fire, and to carry with them a suitable staff or badge of their office.

Firewards, &c., may order buildings to be pulled down, &c. R. S. 18, § 4. Ibid, 2, § 6, clause 17.

11. The firewards who shall be present at the place in immediate danger from any fire, or any three of them, and where no firewards are appointed, the selectmen present, or in their absence, two or more of the civil officers present, or, in their absence, two or more of the chief military officers of the city present, shall have power to direct the pulling down or demolishing of any such house or building, as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire.

Firewards, &c., may command assistance. R. S. 18, § 5.

12. During the continuance of any fire, the said firewards or other officers, respectively, may require assistance for extinguishing the same, and for removing any furniture, goods or merchandize from any building

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1 The statute of 1839 c. 46, § 3, (ante. p. 17,) modified as above, R. S. c. 18, § 19, in respect to the city of Salem.

2 The provisions of this and the two following sections R. S. c. 18, §§ 20, 21, are by § 22 not to take effect in any town or city, until the same shall be adopted in town meeting or by the city council. No vote to accept the same appears to have been passed. Whether the modification before named in note 1, should be considered an acceptance of this section, quere.

on fire or in danger thereof; and may appoint guards to secure the same; and may also require assistance, for pulling down or demolishing any house or building, when they shall judge it necessary; and may suppress all tumults and disorders at such fire.

Firewards may give orders to enginemen, and others, &c. R. S. 18, § 6.

13. The said firewards, selectmen or other officers, shall have authority to direct and appoint the stations and operations of the enginemen, with their engines, and of all other persons, for the purpose of extinguishing the fire; and if any person shall refuse or neglect to obey any such orders, he shall forfeit, for each offence, a sum not exceeding ten dollars.

Owners of buildings, &c., pulled down, to be indemnified, except, &c. R. S. 18, § 7.

14. In case the pulling down or demolishing of any house or building, by directions of the engineers or other officers aforesaid, shall be the means of stopping the said fire; or if the fire shall stop before it come to the same, then every owner of such house or building shall be entitled to recover a reasonable compensation therefor from the town; but when the building, so pulled down or demolished, shall be that in which the fire first begun and broke out, the owner thereof shall receive no compensation therefor.

Embezzling, &c., of property, at a fire, to be deemed larceny. R. S. 18, § 8.

15. In any such case of fire, if any person shall purloin, embezzle, convey away, or conceal any furniture, goods or chattels, merchandize or effects of the inhabitants, whose houses or buildings shall be on fire or endangered thereby, and shall not, within two days, restore or give notice thereof to the owner, if known, or, if unknown, to one of the firewards or selectmen of the town, the person so offending shall be deemed guilty of larceny and be punished therefor, as is provided in such case in the one hundred and twenty-sixth chapter of the Revised Statutes.

Penalty for making bonfires. 1837, 177, § 1. See R. S. 2, § 6, clause 17.

16. If any person shall be concerned in causing or making a bonfire, in any town in the Commonwealth, within ten rods of any house or building, he shall be punished, on conviction before any court proper to try

the same, by a fine not exceeding twenty dollars, or by imprisonment not exceeding one month.

Penalty for false alarms of fire. 1837, 177, § 2.

17. If any person, without reasonable cause, shall, by outcry, or the ringing of bells, or otherwise, make or circulate, or cause to be made or circulated, in any town in the Commonwealth, any false alarm of fire, he shall be punished, on conviction, as mentioned in the preceding section, by a fine not exceeding fifty dollars.

Power to regulate the keeping of gun-cotton, and other like substances. 1847, 51.

18. By an act passed March 6, 1847, the inhabitants of any town, and the government of any city in this Commonwealth, may order that no gun-cotton, or other substance prepared, like it, for explosion, shall be kept within the limits of such town or city, excepting under the regulations and penalties that were then applicable by law to gunpowder; and if it shall be considered necessary for public safety, they may restrict the quantity to be so kept to one-fifth of the weight of gunpowder allowed by law in each case provided for.

City council &c., may make rules in relation to storage and sale of camphene. 1850, 165.

19. The inhabitants of any town, and the city council of any city, in this Commonwealth, may make and adopt such rules and regulations in relation to the storage and sale, within the limits of such town or city, of camphene, or any similar explosive or inflammable fluid, as they may deem reasonable, and may annex penalties to any breach of such rules and regulations, not exceeding twenty dollars for any one offence.

Penalty for having or selling rockets, &c., without license. See R. S. 58, §§ 5, 6.

20. If any person shall have in his possession, with intent to sell, or shall offer for sale, or shall sell, or give away any of the fire works called rockets, crackers, squibs, or serpents, without the license of the mayor and aldermen, he shall, for every such offence, forfeit a sum not exceeding ten dollars to the use of the city.

Penalty for having or setting fire to rockets, &c. Ibid.

21. If any person shall have in his possession, with intent to set fire to, or shall set fire to, any rocket, cracker, squib, or serpent, or shall throw any lighted rocket, cracker, squib, or serpent, within the city, without the license of the mayor and aldermen, he shall,

for every offence, forfeit a sum not exceeding ten dollars to the use of the city.

City council may order how gunpowder shall be kept. City charter, sect. 1. R. S. 58, § 7. R. S. 2, § 6, clause 17.

22. The inhabitants of every town[1] may order, that no gunpowder shall be kept in any place, within the limits of such town, unless the same shall be well secured in tight casks or canisters; and that no gunpowder above the quantity of fifty pounds, shall be kept or deposited in any shop, store, or other building, or in any ship or vessel which shall be within the distance of twenty-five rods from any other building or wharf; that no gunpowder, above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building; and that no gunpowder, above the quantity of one pound, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building in such town, unless the same be well secured in copper, tin, or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers.

Warrant may be issued for searching places where gunpowder is suspected to be kept. 1853, 57, 10. 1845, 58, 2. City charter, § 8. R. S. 58, § 8. R. S. 2, § clause 17.

23. Upon complaint made to any justice of the peace[2] by either of the selectmen[3] or firewards of any town, that he has probable cause to suspect, and doth suspect, that gunpowder is deposited and kept within the limits of the town, contrary to law, such justice may issue his warrant directed to either of the constables of such town, ordering him to enter any shop, store or other building or vessel, specified in said warrant, and there to make diligent search for the gunpowder, suspected to have been deposited or kept as aforesaid, and to make return of his doings to said justice forthwith.

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1 The word "town" may be construed to include cities, &c. R. S. c. 2, § 6, clause 17.

2 The police court has exclusive jurisdiction by statute of 1853, c. 57, § 10. See Police Court.

3 The powers of the selectmen of Salem were vested in the mayor and aldermen by § 8 of city charter.

24. If any person shall commit either of the offences mentioned in the two preceding sections, he shall forfeit a sum not exceeding twenty dollars to the use of the town; *provided*, that said sections shall not extend to any manufactory of gunpowder, nor in any case to prevent the transportation of gunpowder through any town or from one part of any town to another part thereof.[1]

Penalty for unlawfully keeping gunpowder. R. S. 58, § 9.

R. S. 2, § 6, clause 17.

An Ordinance for the prevention of fires.[2]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. No person or persons shall make any bonfire or set on fire any wood, straw, shavings, or other combustible matter, by night or by day, in any street, lane, alley, yard, garden, or in any open place in this city, under the penalty of three dollars for every such offence. *Provided*, however, that this shall not be understood, or so construed as to prevent any mechanic, or other person, from kindling such fire near his house or shop, at any time during the day-light only, as may be absolutely necessary in his occupation, the same to be watched by some suitable person, while it shall continue burning, or to prevent any person from burning the chaff or rubbish in his field or garden, the same to be kindled in the day time, and to be extinguished before sunset.

Penalty for making bonfires. June 27, 1853.

Proviso.

SECT. 2. No person or persons shall exercise the trade or employment of a blacksmith, whitesmith, gold, silver or coppersmith, founder, baker, cooper, or cabinet

Smiths and other trades to be licensed.

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1 For other provisions respecting fire see R. S. c. 18, §§ 1, 2, 9—22: c. 58, § 5—9. See also Gunpowder, Steam Engines, and Furnaces.

2 Passed June 27, 1853.

maker, nor shall boil oil or make varnish in any shop, building, or place in this city, other than such as may be licensed by the mayor and aldermen, under the penalty of forfeiting and paying the sum of five dollars for the first month, and ten for every month afterwards, so long as they shall continue to offend against this order. No person shall grave any vessel in this city, except in such place as shall be licensed by the mayor and aldermen, under the penalty of five dollars for every such offence. And no person shall fire or burn any cask except in a safe and sufficient brick or stone chimney; and no person shall steam or burn any board or plank for boat building or other purposes, except in such place or places as shall be safe in the opinion of the mayor and aldermen, and approved by them, under the penalty of five dollars for each and every day's offence.

Penalty.

Gravers to be licensed.

Penalty.

Firing casks

Steaming lumber.

Penalty.

Ashes not to be kept in wooden vessels. Penalty.

SECT. 3. No person shall keep any ashes in vessels made of wood, under the penalty of ten dollars for every such offence.

Gunpowder not to be kept within the limits of the city unless.

SECT. 4. No gunpowder shall be kept within the limits of this city, unless the same shall be well secured in tight casks or canisters; and no gunpowder, above the quantity of fifty pounds, shall be kept or deposited in any shop, store or other building, or in any ship or vessel, which shall be within the distance of twenty-five rods from any other building or wharf; and no gunpowder above the quantity of twenty-five pounds, shall be kept or deposited in any shop, store, or other building, within ten rods of any other building; and no gunpowder above the quantity of one pound, shall be kept, or deposited in any shop, store or other building within ten rods of any other building in the city, unless the same be well secured in copper, tin or brass canisters, holding, not exceeding five pounds each, and closely covered with copper, brass or tin covers, according to the provisions of the seventh section of the fifty-eighth chapter of the Revised Statutes. And if any

person shall commit either of the offences mentioned in this section, he shall forfeit and pay a sum not less than five, nor more than twenty dollars. Penalty.

SEC. 5. No person shall take from its place of deposit, any fire ladder, without permission from the proper officers of the fire department, or from the society or persons to whom such ladder may belong, under the penalty of five dollars for every such offence. Fire ladders not to be taken from place of deposit. Penalty.

SECT. 6. If any person shall carry any fire through any street, lane, or other public place, or on any wharf in said city, except in some covered secure vessel, he or she shall forfeit and pay for such offence the sum of one dollar. Penalty for carrying fire through streets, &c.

SECT. 7. If any person shall have in his or her possession, in any ropewalk, twine or line factory, barn or stable within this city, any fire, lighted pipe, or segar, lighted candle or lamp, except such candle or lamp is kept in a secure lantern, the person so offending shall forfeit and pay for each offence a sum not less than one, nor more than twenty dollars. Penalty for having lighted pipes, &c. in rope walks, &c.

SECT. 8. The mayor and aldermen upon complaint made to them, or upon their own knowledge of any defective chimney, or hearth within this city, shall cause the same to be examined, and shall order the same either to be repaired, or to be taken down, as they shall deem expedient; and if the owner or owners of any such chimney or hearth, after an order from the mayor and aldermen, certified by the city clerk, and served upon him, her, or them, ordering such chimney or hearth to be repaired or taken down, shall wilfully neglect to repair or take down the same, such owner or owners shall forfeit and pay a sum, not less than five nor more than twenty dollars. And the mayor and aldermen shall have full power and authority, and it shall be their duty, in such case, to cause such defective chimney or hearth to be repaired or taken down, and the owner or owners of the same shall pay the Defective chimneys. Penalty for not repairing after notice. Mayor and aldermen may cause defective chimneys to be taken down, &c.

whole expense of repairing, or taking down such chimney or hearth.

Chimneys taking fire.

SECT. 9. If any chimney, stove pipe or flue shall take fire, from neglect to have the same swept or burned, and shall blaze out at the top,. the occupier of the house or room to which such chimney shall belong, or the person or persons so setting fire to the same, shall forfeit and pay the sum of two dollars, unless it shall happen within sixty days after such chimney shall have been swept—in which case the person who last swept the same shall forfeit and pay the sum of two dollars, if such fire shall be occasioned by any defect in sweeping the same. *Provided, however*, that no person shall be subject to this penalty, who shall have fired his or her chimney, for the purpose of cleaning the same, within three months previous to its taking fire as aforesaid. And no chimney shall be fired, except at a calm time, when it shall actually rain or snow, and between the time of sunrising and twelve o'clock at noon; and if any person shall set fire to his or her chimney at any other season or part of the day, for the purpose of burning the same, he or she shall forfeit and pay the sum of five dollars for every such offence. And it shall be the duty of the mayor and aldermen to provide a chimney sweeper or sweepers for the city, and to establish the prices he or they shall receive for their services. And no person shall sweep any chimney in this city, without a license from the mayor and aldermen, under the penalty of two dollars.

Penalty.

Proviso.

When chimneys may be fired.

Penalty.

Chimney sweepers.

Penalty.

Stove funnels and stoves regulated.

SECT. 10. No person or persons shall project any stove funnel through any wooden building, unless the same be securely surrounded by brick or stone work, not less than four inches in thickness, nor unless the same shall be placed in such direction as the mayor and aldermen shall approve. And no stove shall be used in any building, without a sufficient and secure hearth. And in case of complaint to the mayor and aldermen of

any funnel or stove, they shall cause the same to be examined, and the same shall be removed, or altered and made secure, if they shall so direct. Whoever shall offend against any provision of this section, shall forfeit and pay the sum of three dollars; and if he shall continue to offend against the same, after notice from the mayor and aldermen to remove or alter such funnel or stove, he shall forfeit and pay the sum of ten dollars for every week that such offence shall be continued. Penalty.

SECT. 11. No person shall be prosecuted or tried for any offence against any of the provisions of this ordinance, unless complaint for the same shall be instituted and commenced within six months from the time of committing the same. Complaint to be made within six months.

An Ordinance providing for the appointment of engineers of the fire department, and of firewards in the city of Salem.[1]

Be it ordained by the city council of the city of Salem, as follows:

[13.] SECT. 1. It shall be the duty of the city council, annually, as soon after the organization of the city government as may be convenient, to elect a suitable number of firewards. Election of firewards. March 10, 1845.

[14.] SECT. 2. From among the firewards so chosen, the city council shall select seven, who shall compose a board of engineers of the fire department; said board of engineers to have all the powers and exercise all the authority conferred on them by the act of the Legislature, passed February nineteenth, eighteen hundred and forty-five. Board of engineers chosen and their powers.

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1 Passed March 10, 1845.

An Ordinance to amend ordinance number fifty-five.[1]

Be it ordained by the city council of the city of Salem, as follows:

Penalty for smoking in the streets, &c. January 26, 1852.

[14.] SECT. 1. No person shall have in his or her possession any lighted pipe, or cigar, in any street, highway, lane or passage-way, or public place or building, or on any wharf in this city, at any time on Sunday, nor after sunset or previous to the sun-rising of any other day of the week, nor in any public building in the day time, under the penalty of three dollars for every and any such offence.

Repealing clause.

[15.] SECT. 2. So much of any preceding ordinance as conflicts with the provisions of this ordinance is hereby repealed.

GUNPOWDER.

STATUTES.

1. The keeping of gunpowder regulated.
2. Firewards authorized to make rules in relation to gunpowder.
3. Gunpowder may be seized and forfeited.
4. Gunpowder forfeited.
5. Firewards may search for gunpowder.
6. Firewards to publish their rules and regulations.

ORDINANCES.

1. Board of engineers shall make regulations relative to deposit and transportation of gunpowder in the city. Regulations to be consistent with and enforced according to statute of 1826, c 113.
2. Repealing clause.

[3.] Keeper of powder-house to be appointed.

[4.] Duties of the keeper. To render annual account.

[5.] Fees for storage, &c.

[6.] No fee from military companies. &c.

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[1] Passed Jannary 26, 1852.

STATUTES.

1. No person, except on military duty in the public service of the United States, or of this Commonwealth, shall keep, have or possess, in any house, warehouse, shop or other building, nor in any street, lane, alley, passage way, yard or cellar, nor in any wagon, cart or other carriage, nor on any wharf, nor on board of any ship or other vessel, within two hundred yards of any wharf, or of any part of the shore or the mainland, nor in any place within the town of Salem, gunpowder, in any quantity exceeding five pounds, in any way or manner, other than by this act, and by the rules and regulations herein after mentioned, may be permitted and allowed.

The keeping of gunpowder regulated. 1825, 113. §1.

City Charter §1.

2. The firewards[1] of the town of Salem are authorized to make and establish rules and regulations, from time to time, relative to the times and places at which gunpowder may be brought to, or carried from said town, by land or by water, the times when, and the manner in which, the same may be transported through said town, to direct and regulate the kind of carriages, boats and other vehicles, in which the same may be so brought to, carried from, and transported through said town, to direct the manner in which gunpowder may be kept by dealers and other persons, and to direct and require all such precautions as may appear to them needful and salutary to guard against danger in the keeping of gunpowder, and in the transportation thereof to, from, and through, the town of Salem.

Firewards authorized to make rules in relation to gunpowder. 1845. 58 § 2. 1825, 113, § 2.

3. All gunpowder which shall be kept, had or possessed, within the town of Salem, or brought into, or transported through the said town, contrary to the provisions of this act, and to the rules and regulations made as aforesaid, may be seized or taken into custody by any one or more of the firewards[1] of said town, and it shall

Gunpowder may be seized and forfeited. 1825, 113, § 3. City Charter § 1.

1845, 58, § 2.

[1] See statute of 1845, c 58, § 2 (*ante* section 2, p. 61.)

be the duty of such fireward or firewards within twenty days after such seizure, to file a libel, in the office of the clerk of the court of common pleas, for the county of Essex, stating the case of such seizure, and praying for a decree of forfeiture; and the judges of said court shall have power to hear and determine the case by a jury, where there is a claimant, but without a jury, if upon proclamation, no claimant appear; and to decree the forfeiture and disposition of such property according to law; and to decree a sale and distribution of the proceeds, first deducting all charges; and if such libel be not supported, restitution of the property shall be decreed without costs; but if a claimant appear and dispute the forfeiture, and said gunpowder shall be finally decreed forfeited, such claimant shall pay all costs of prosecution, which may have legally arisen thereon.

Gunpowder forfeited. 1825 113, § 4.

4. All gunpowder so forfeited, shall be forfeited one moiety thereof to the use of this Commonwealth, and the other moiety thereof to the use of the town of Salem.

Firewards may search for gunpowder 1825 113 § 5. City charter § 1. 1845, 58. § 2.

5. It shall and may be lawful, for any one or more of the firewards[1] of the town of Salem to enter any building or other place in said town, in the day time, to search for gunpowder, which they may have reason to suppose to be concealed or kept contrary to the provisions of this act, or to the rules and regulations made as aforesaid, having first obtained a search warrant therefor according to law.

Firewards to publish their rules and regulations. 1825 113 § 6. 1845, 58 § 2. City charter § 1.

6. It shall be the duty of the firewards[1] of the town of Salem, to cause all such rules and regulations as they may make and establish, by virtue of the authority given by this act, to be published in two or more newspapers printed in the town of Salem, and to cause such publication to be continued two weeks successively, for the information and government of all persons concerned.[2]

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1 See note 1, p. 75 *ante*.

2 For general provisions respecting gunpowder see R. S. c. 28, § 92—94; c. 58, §§ 7, 8, 9. See Buildings—§§ 3, 4, 5, p. 40.

An Ordinance regulating the deposit and transportation of gunpowder in the city.[1]

Be it ordained by the city council of the city of Salem, as follows:

Board of engineers shall make regulations relative to deposit and transportation of gunpowder in the city. March 21, 1853.

SECT. 1. It shall be the duty of the board of engineers of the fire department to make and establish rules and regulations, from time to time, relative to the times and places at which gunpowder may be brought to or carried from the city, by land or by water, the times when, and the manner in which, the same may be transported through the city, to direct and regulate the kind of carriages, boats and other vehicles in which the same may be so brought to, carried from and transported through the city, to direct the manner in which gunpowder may be kept by dealers and other persons, and to direct and require all such precautions as may appear to them needful and salutary to guard against danger in the keeping of gunpowder, and in the transportation thereof to, from and through the city: said rules and regulations to be consistent with and to be enforced in the manner set forth in the provisions of a special law of the Commonwealth, entitled "an act regulating the deposit and transportation of gunpowder in the town of Salem," passed the second day of March, A. D. eighteen hundred and twenty-six.

Regulations to be consistent with and enforced according to statute of 1826 c. 113.

Repealing clause.

SECT. 2. All ordinances and regulations inconsistent with the above are hereby repealed.[2]

An ordinance authorizing the appointment, and prescribing the duties of keepers of the powder house, and fixing the fees for the storage of powder.[3]

Be it ordained by the city council of the city of Salem, as follows:

Keeper of the Powder House to be appointed. June 28, 1841.

[3.] SECT. 1. The mayor and aldermen shall forth-

1 Passed March 21, 1853. 2 See Fire, § 4, p. 70.

3 Passed June 28, 1841.

with appoint, and shall hereafter annually in the month of April appoint a keeper of the powder house, who shall receive such compensation for his services as the city council shall annually direct.

Duties of the keeper.

[4.] SECT. 2. It shall be the duty of the keeper to take care of the powder house and the powder in said magazine, and not allow any person to go into the magazine without having on his feet woolen moccasins or India rubber shoes, to be always kept there for the purpose. He shall collect and receive all fees that may be due from all persons who may have had, or may have powder stored in the magazine, and pay over the same to the city treasurer annually. He shall render an account on the first Monday of March[2], annually, of all fees and emoluments, to the mayor and aldermen.

To render annual account.

Fees for storage &c.

[5.] SECT. 3. There shall be charged a fee of twenty-five cents each time of opening the magazine, and one cent per keg storage, and one cent per keg storage additional for each keg stored over four months.

No fee from military companies &c.

[6.] SECT. 4. No fee shall be required for receiving or delivering powder for the military companies, or for the city authorities.

HARBOR.

STATUTE.	any vessel, &c. into the harbor.
Ballast, &c. not to be thrown from	Penalty.

Ballast not to be thrown from any vessel into the harbor. 1838. 12.

No person shall throw, or put, or cause to be thrown or put, from any vessel or otherwise, any ballast, rubbish, or materials of any description, into the harbor of Salem,

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[2] See Finance, page 61, section [13.]

or into the channel of the South River, which may injure or obstruct the navigation of the same. Any person guilty of this offence may be prosecuted therefor, by complaint before the police court of said city, and shall, at the discretion of the justice of said court, be punished by a fine not exceeding twenty dollars, or to be holden to answer for the same at the court of common pleas, and on conviction in said court, shall be punished by a fine not exceeding two hundred dollars for every offence. Penalty.

HAWKERS AND PEDLERS.

STATUTES.

1. Hawkers, pedlers, petty chapmen, and other itinerant dealers, to be licensed.
2. Articles enumerated, which may be sold by hawkers, &c., without license;—and power of cities and towns to restrain such sales.
3. Licenses to be granted by the secretary of the commonwealth, upon the certificate of selectmen or mayors, as to the citizenship, residence, and good repute of the applicants.
4. Extent of such licenses,—sums to be paid to the treasurers of towns or cities therein mentioned,—and powers conferred thereby.
5. Sums payable for such licenses.
6. Resident taxpayers not to pay for license.
7. Dates and terms of licenses granted. Records of licenses,—how and by whom to be made.
8. Special state and county licenses,—how, and upon what terms, to be granted.
9. Sums paid for licenses,—to belong to the state, or to the county, city, or town, receiving the same.
10. Name, residence, and number of license to be borne on the vehicle or parcels of person licensed; and license to be exhibited, to selectmen, &c., when demanded.
11. Penalties for violations of this act.
12. Certain acts concerning auctioneers not to extend to hawkers and pedlers.

1. From and after the first day of July next, every hawker, pedler, or petty chapman, or other person, going from town to town, or from place to place, or from Hawkers, pedlers, petty chapmen, and other itinerant dealers, to be licensed. 1846, 244, § 1.

dwelling-house to dwelling-house, in the same town, either on foot, or with one or more horses, or otherwise carrying for sale, or exposing to sale, any goods, wares or merchandise, or taking a residence in any town for that purpose, for a less time than one year, except as provided in the second section, or under a license, granted as hereinafter provided, shall forfeit a sum not exceeding two hundred dollars for every offence; and nothing contained in this section shall be construed to restrain sales at public auction, according to law.

Articles enumerated, which may be sold by hawkers, &c., without license. 1846, 244, § 2.

2. Any person may go about, as aforesaid, selling and exposing to sale, any fruits and provisions whatever, live animals, brooms, agricultural implements, fuel, newspapers, books, or pamphlets, agricultural products of the United States, the products of his own labor or any labor of his own family; but the sale of jewelry, wines, spirituous liquors, playing cards, indigo, and feathers, as aforesaid, is hereby prohibited: *provided*, if the city council of any city shall authorize the mayor and aldermen of such city, or the inhabitants of any town shall authorize the selectmen of such town, to restrain the sale, by minors, of any goods, wares, or merchandise, the sale of which in the manner aforesaid, is permitted in this section, such mayor and aldermen, or selectmen, while such authority remains in force, may exercise in the premises, all the powers they are by law authorized to exercise in relation to theatrical exhibitions and public shows; and any violation of such restraint, when the same shall be imposed by the regulations of said mayor and aldermen, or said selectmen, or any sale of the articles in question, without a license, where the same shall be required in exercise of the authority above granted, shall subject the persons guilty of the same to a penalty not exceeding ten dollars for every offence: *provided further*, that no such restraint imposed, or license granted, shall remain in force beyond the term of office of those by whom the same was imposed or granted.

Power of cities and towns to restrain such sales.

Licenses to be granted by the secretary of the commonwealth, upon the certificate of selectmen, or mayors, as to the citizenship, residence and good repute of the applicants. 1846. 244 § 3.

3. The secretary of the Commonwealth may grant a license to go about selling and exposing to sale, any goods, wares or merchandise, not prohibited in the second section, to any applicant, who shall file in his office, a certificate, signed by a majority of the selectmen of any town, or the mayor of any city, in the Commonwealth, which certificate shall state that, to the best knowledge and belief of such mayor or selectmen, the applicant therein named, is a citizen of the United States, and resides in such city or town, and is in good repute for morals and integrity. And the mayor or selectmen as aforesaid, before granting such certificate, shall require every such applicant to make oath that he is the person named therein, that he is a citizen of the United States, and is a resident of such city or town, which oath shall be certified by a justice of the peace, and accompany the certificate.

Extent of such licenses, sums, to be paid to the treasurers of towns or cities therein mentioned, and powers conferred thereby Ibid, § 4.

4. The secretary of the Commonwealth shall cause to be inserted, in every license, the names of such cities and towns as the applicant shall select, with the sum to be paid to the respective treasurers thereof, annexed, and shall receive from the applicant one dollar for each city or town so inserted; and every person so licensed, is hereby authorized to sell, as aforesaid, any goods, wares or merchandise, not prohibited in the second section, in any city or town mentioned in his license, upon first tendering to the treasurer thereof, the sum stated to be due; and the treasurer of such city or town shall make a certificate on the face of the license, stating the sum so received. No license granted under this act shall be pleaded in bar to any complaint against the person licensed, if it be proved that he exposed to sale in any county, city or town, mentioned in such license, any article not permitted or prohibited in the second section, prior to tendering to the treasurer thereof the sum required by this act, or in any county, city or town, not mentioned in such license: *provided*,

that this act shall not be construed to require any person so licensed, to pay the sum due to the treasurer of any county, city or town, before he is prepared to trade therein.

Sums payable for such licenses. 1846, 244, § 5. 1851 298 § 1.

5. Every person licensed under the foregoing sections, in addition to the sum payable to the secretary of the Commonwealth, shall pay to the treasurer of each city or town, mentioned in his license, the sums following:—For every town containing not more than one thousand inhabitants, according to the United States census, next preceding the date of any license, three dollars. For every town containing more than one thousand and not more than two thousand inhabitants, six dollars. For every town containing more than two thousand and not more than three thousand inhabitants, eight dollars. For every town containing more than three thousand and not more than four thousand inhabitants, ten dollars. And for every town containing more than four thousand inhabitants, the sum shall be increased, in addition to ten dollars, one dollar for every one thousand inhabitants, over four thousand contained therein: *provided*, that the sum to be paid to the treasurer of any city or town shall, in no case, exceed twenty-five dollars.

Resident tax payers not to pay city or town treasurer for license to sell goods. 1851, 298, § 1.

6. Any person resident in any city or town, paying taxes upon his stock in trade and qualified to vote therein, may sell, and expose to sale, in such city or town, goods, wares or merchandise, upon obtaining license therefor, pursuant to the provisions of the two hundred and forty-fourth chapter of the act of the year one thousand eight hundred and forty-six, and shall not be required to pay to the treasurer of such city or town the sums prescribed in the last section.

Dates and terms of licenses granted. Records of licenses, how and by whom to be made. 1846, 244, § 6.

7. Every license granted under these provisions before the first day of January, A. D., 1847, shall bear date on the first day of July, A. D., 1846, and shall continue in force till the first day of January aforesaid,

and no longer; and the amount to be paid therefor shall be one half of any sums herein provided to be paid for a similar license for a year, and every license granted after the aforesaid first day of January, shall bear date on the first day of January of the year in which it is granted, and shall continue in force one year and no longer; and it shall not be lawful for any person to sell under any such license, except the person licensed therein or named in a transfer of the same, as hereinafter provided. The secretary of the Commonwealth shall keep a record of all licenses granted, with the number of each, the name and residence of the persons licensed, and the counties, cities and towns, mentioned therein, and also of all special state licenses. The treasurers of the counties, cities and towns, shall severally keep records of all licenses upon which the sums provided in this act have been paid, with the number of each, the name and residence of the persons licensed, and the sums received thereon, and all such records shall be open for public inspection.

Special state and county licenses, how, and upon what terms to be granted. 1846, 244, § 7.

8. In addition to the licenses authorized in the foregoing sections, the secretary of the Commonwealth, upon the conditions required in the third section, may grant special state licenses, upon payment, by the applicant, of one hundred dollars for each license; and the person so licensed, shall be authorized to expose to sale any goods, wares or merchandise, not prohibited in this act, in any city or town in this Commonwealth; and may also grant, as aforesaid, special county licenses, upon payment, by the applicant of one dollar for each county mentioned therein; and the person so licensed, shall be authorised to expose to sale, to any person within said counties, any tin, britannia, glass or wooden wares, of the manufactures of the United States, or any other goods, wares or merchandise, manufactured by himself, or his employer, and not prohibited in this act, upon tendering to the treasurer of each county

mentioned in said license, respectively, the sums following:—For Suffolk, Essex, Middlesex and Worcester, each four dollars. For Norfolk, Berkshire, Hampden, Bristol and Plymouth, each three dollars. For Franklin, Hampshire and Barnstable, each two dollars. For Nantucket, one dollar; for Dukes, one dollar. And the county treasurers, respectively, upon the receipt of any sum, as aforesaid, shall certify thereto on the face of the license, stating the amount so received.

Sums paid for licenses to belong to the state or to the county, city or town, receiving the same. 1846, 244, § 8.

9. All sums paid to the secretary of the Commonwealth under this act, shall be for the use of the Commonwealth; and all sums paid to the treasurer of any county, city or town, shall be for the use of the county, city or town, so receiving the same. Any license granted under this act, upon proceedings had by the applicant, as provided in the third section, may be transferred by the secretary of the Commonwealth; and the person to whom such license is transferred, shall be liable, in all respects, as if he were the person originally licensed.

Name residence, and number of license to be borne on the vehicle, &c. License to be exhibited, to selectmen, &c. when demanded. Ibid, § 9. 1851. 298 § 2.

10. Every person licensed as herein provided, shall post his name, residence, and the number of his license, in a conspicuous manner, upon his parcels or vehicle, and whenever such license is demanded of him, by any selectman or justice of the peace, town treasurer, town clerk, constable, or police officer, within the limits of his town or city, he shall forthwith exhibit it, and if he neglect or refuse to do so, shall be subject to the same penalty as if he were without a license, and this act, or a synopsis thereof, shall be printed on every license.

Penalties for violations of this act 1846, 244, § 10.

11. The license of any person who shall be convicted of a violation of any provision of this act, shall be void. Any person who shall counterfeit or forge a license, or who shall have a counterfeited or forged license in his possesion, with the intent to utter or use the same as true, knowing it to be false and counterfeit, or who shall attempt to sell under a license which has expired, or is forfeited, or which was not granted to

him, and has not been transferred to him, shall forfeit a sum not exceeding one thousand dollars.[1]

Acts concerning auctioneers not to extend to hawkers and peddlers. 1852, 115, § 2.

12. Nothing contained in an act entitled, "an act concerning auctioneers," passed in the year one thousand eight hundred and thirty-seven, or in an act entitled as aforesaid, passed in the year one thousand eight hundred and fifty-two, shall be construed as authorizing, or in any way empowering, hawkers and pedlers, or other itinerant traders, who may now hold, or may hereafter hold, an auctioneer's license, to sell, or to expose for sale, by public auction, any goods, wares, or merchandise whatever, in any other city or town than in the one from whose authorities such license was obtained; and there only in such place or places as shall be expressly described or set forth in said license.

HAY AND HAY SCALES.

STATUTES.

1. Weighers of hay to be appointed.
2. Shall conform to rules to be established by city council.
3. City council may remove weighers, &c.
4. Penalty for setting up scales without authority.
5. How crates of pressed hay shall be branded.
6. Forfeiture, and to whose use, of hay offered for sale without the required brand.
7. Mode of recovering such forfeiture.
8. Mayor and aldermen may, on petition, appoint inspectors of bale or bundle hay.
9. May remove inspectors, and fill vacancies.
10. Duties of inspectors.
11. How inspected hay shall be branded.
12. Inspectors to furnish themselves with scales, &c.
13. Fees, how fixed, and by whom paid.
14. Penalty for selling without inspection, &c. Proviso.

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[1] The act of 1846, c. 244, § 11, repealed Rev. Stat. c. 35. §§ 7 & 8.

STATUTES.

Weighers of hay to be appointed. R. S. 28, § 95.

1. The mayor and aldermen may from time to time appoint, for a term not exceeding one year, some person or persons to have the superintendence of the hay scales belonging to the city, who shall weigh hay offered for sale in the city, and any other article offered to be weighed.

Shall conform to rules to be established by city council. Ibid, § 96.

2. The persons so appointed shall conform to all such rules and regulations, as shall be established by the city council, concerning the said hay scales, and the compensation or fees for weighing hay and other articles.

City council may remove weighers, &c. Ibid, § 97.

3. The city council may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise.

Penalty for setting up scales, without authority. Ibid § 98.

4. If any person not appointed as aforesaid, shall set up any hay scales in the city, for the purpose of weighing hay, or other articles, he shall forfeit the sum of twenty dollars a month, so long as the same shall be continued, to be recovered by an action of debt, and appropriated to the use of the city.[1]

How crates of pressed hay shall be branded. 1836, 240, § 1.

5. All pressed hay, which shall be offered for sale in this Commonwealth, shall be branded upon the crate enclosing it, with the letter of the christian name and the whole of the surname of the person packing and screwing, or otherwise pressing said hay, and with the name of the town and state where said hay shall be pressed.

Forfeiture, and to whose use, of hay offered for sale

6. All pressed hay, which shall be offered for sale without being branded as aforesaid, shall be forfeited,

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1 This section of the Revised Statutes contains a provision, that this and the three preceding sections shall not apply to any *town*, which shall not adopt the same, and shall cease to operate in such *town*, when the *town* shall so determine. This provision does not seem applicable to the city of Salem. The city council have not adopted these sections.

one half to the person or persons prosecuting therefor, and the other half to the use of the city or town where said hay shall be so offered for sale.

without the required brand. 1836, 240, § 2.

7. All forfeitures, incurred under the two preceeding sections, may be recovered, with costs of suit, by action, bill, plaint or information, before any justice of the peace, or other court proper to try the same.

Mode of recovering such forfeiture. Ibid, § 3.

8. The mayor and aldermen of each city in this Commonwealth, in which bale or bundle hay is sold, may, on the petition of ten or more legal voters of such city, annually appoint one or more persons as inspectors of bale or bundle hay, who shall be sworn to the faithful discharge of the duties of their office.

Mayor and aldermen may on petition, appoint inspectors of bale or bundle hay. 1847, 246, § 1.

9. Said mayor and aldermen may remove any inspector so appointed, and fill any vacancy that may occur from death or otherwise.

May remove inspectors, and fill vacancies. Ibid, § 2.

10. It shall be the duty of the inspector to inspect and weigh all bale or bundle hay, within the limits of the city, or ward for which he may be appointed, when requested so to do by the owner or vendor of such hay.

Duties of inspectors. Ibid, § 3.

11. All bales or bundles of hay so inspected, which are found to be sweet, of good quality, and free from damage or any improper mixture, shall be branded or marked *No.* 1. All bales or bundles which are found to be sweet, and free from damage or any improper mixture, but consisting of hay of a secondary quality, shall be branded or marked *No.* 2. All bales or bundles which are found to be wet, or in any way damaged, or which shall contain any straw or other substances not valuable as hay, shall be branded or marked *bad.* Each bale or bundle so inspected shall also be branded or marked with the first letter of the christian name, and the whole of the surname, of the inspector, and the name of the city or town for which he is inspector, together with the month and year when inspected; and also the net weight of the bundle.

How inspected hay shall be branded. Ibid, § 4.

12. Each inspector shall furnish himself with proper

Inspectors to fur-

nish themselves with scales, &c. Ibid, § 5.

scales, weights seals, and other suitable instruments for the purposes aforesaid.

Fees, how fixed and by whom paid. Ibid, § 6.

13. The fees for inspecting, weighing, and marking, as provided for in the five preceding sections, shall be fixed by the respective officers having the power of appointment, and shall be paid by the employer of the inspector.

Penalty for selling without inspection, &c. Ibid, § 7.

14. Any person who shall sell any bale or bundle hay, in any city or town in this Commonwealth, where an inspector is appointed, as required by the six preceding sections, which has not been inspected and weighed as therein provided, shall forfeit, for each bale or bundle so sold, two dollars, to be recovered in any court proper to try the same, one half to the complainant, and the other half to the city or town in which

Proviso.

such sale shall have been made: *provided*, that no inspection under this act shall be made, where the vendor and vendee shall certify in writing to the inspector, that they object to an inspection.[1]

HEALTH.

STATUTES.

1. Powers formerly vested in the board of health for Salem, transferred to the city council. Health commissioner.
2. Powers formerly vested in boards of health of towns, now vested in city council of cities.
3. How such powers and duties may be exercised. Either branch of council, or any committee, may be board of health.
4. Nuisances, how and by whom to be removed. Penalty.
5. Order to remove nuisance, how to be served.
6. Proceedings when order is not

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1 For the appointed places for hay stands see Wood, *post*.

complied with. Expenses, by whom paid.
7. How expenses shall be recovered.
8. Fines, &c., to whom to enure, and how recovered.
9. Physician to the board of health.
10. Compensation of physician, &c.
11. Board of health, to make regulations as to nuisances, &c.
12. May make provision as to infected articles,
13. May make regulations as to interments, &c.
14. Notice of their regulations to be published.
15. Board to examine into nuisances, &c.
16. When a party is convicted of a nuisance, the court may order it removed at his expense.
17. Court of common pleas, &c., may issue injunctions in cases of nuisance.
18. How board of health may make compulsory examination of premises, when refused, &c.
19. Board may grant permits for the removal of nuisances, infected articles or sick persons.
20. If the infected person cannot be removed, provision to be made for him, &c.
21. Persons may be stationed on the borders of other states, to examine, &c.
22. Any two justices may issue warrants to remove sick persons.
23. One justice may issue warrant to secure infected articles.
24. Justices may impress houses and stores, &c., for safe keeping of goods, &c.
25. Officers may break open houses, shops, &c., and command aid.
26. Expenses to be paid by owners of goods.
27. Town shall make compensation for houses, &c., or services impressed.
28. Board of health may remove the occupants of any cellar, &c., occupied as a dwelling house, which is unfit for the purpose, and a cause of nuisance, &c.
29. Removal of prisoners attacked with diseases in jail.
30. Return of removal to be made to the court. Such removal shall not be an escape.
31. Towns may establish a quarantine ground.
32. Two or more towns may establish common quarantine ground.
33. Board of health may establish the quarantine of vessels.
34. Quarantine regulations to extend to all persons, &c.
35. To be binding on all persons after public notice.
36. Vessels to be ordered to quarantine ground.
37. Penalty if master, seaman, &c. refuse to make answer on oath, &c.
38. Quarantine expenses to be paid by such person or owner.
39. Board of health to provide for safety of inhabitants, when persons are infected with dangerous sickness
40. Board to provide hospitals immediately, when any dangerous disease breaks out unexpectedly.
41. Hospitals for the small pox, &c., may be provided by towns.
42. To be under the orders of the board of health.
43. Not to be established within one hundred rods of houses in an adjoining town, unless, &c.
44. Physician and others in hospitals to be subject to board of health.
45. Selectmen and board of health shall give notice of dangerous disease by red flags, &c.
46. Penalty on physicians and others for violating regulations.
47. Every householder to give notice of small pox, &c., in his family.

48. Penalty on physicians for not giving notice of small pox, &c.
49. Towns may provide for inoculation of its inhabitants, and defray expenses.
50. Mayor and aldermen to assign places for offensive trades.
51. If such place become a nuisance, court of common pleas may revoke, &c.
52. Action for damages from nuisances.
53. Selling corrupt and unwholesome provisions without notice.
54. Adulterating food or liquors.
55. Adulterating drugs or medicines.
56. Violation of sepulture.
57. Penalty for selling tainted fish for food.

ORDINANCES.

1. Execution of health laws and ordinances committed to city marshal.
2. Mayor and aldermen may cause persons sick with contagious disease to be removed. May cause houses to be vacated.
3. Owners shall furnish houses with suitable drains, privies, &c.
4. Proceedings where a suitable drain, &c., is not constructed.
5. Mayor and aldermen may remove persons from tenements where too numerous or unprovided with vaults, &c.
6. How vaults and privies shall be constructed. Offensive vaults, &c., shall be cleansed.
7. Regulations as to cleansing vaults.
8. Further regulations as to cleansing vaults.
9. Regulations as to cellars, &c. in a state of nuisance.
10. No filth to be thrown into streets, &c.
11. Penalty.
12. Filth may be removed by order of mayor and aldermen.
13. Diseased provisions not to be sold. Sale and keeping of fish regulated. Proviso.
14. Green and tainted hides, &c., not to be landed without permit.
15. Persons not complying with notice to remove a nuisance, to be prosecuted. Nuisance to be removed at the expense of the owner of the premises.
16. City marshal, &c., may enter houses for the purpose of removing nuisances, &c.
17. Penalty how recovered.

[18.] Mayor and aldermen to constitute board of health.

Quarantine.

[19.] Mayor and aldermen shall superintend the quarantine department, &c.

[20.] Quarantine physician to be chosen, and his duties.

[21.] Salary of quarantine physician. Tenure of office.

[22.] Keeper of the hospital, and his duties. Compensation.

[23.] Quarantine of vessels.

[24.] Quarantine ground.

[25.] Discharge from quarantine.

[26] No person to board vessels performing quarantine.

[27.] Permits to visit hospital during time of quarantine.

[28.] Penalty.

Burials.

[29.] Repealing clause.

[30.] Howard street burial ground enlarged.

[31.] No tombs to be built except — Proviso.

[32.] Burials and reinterments.

[33.] Superintendent of burials appointed. Vacancy in the office. Duties of superintendent. To take personal charge of burials. To deliver certificate of name, &c. of deceased to city clerk.

[34.] Assistants appointed, and their duties.

[35] Disability of superintendent provided for.
[36] Funeral car.
[37.] Compensation of superintendent and assistants. Return of fees.
[38] Immediate notice to be given of decease of any person, to superintendent
[39.] Burials by other persons prohibited. Proviso.
[40] Penalty.
[41.] Burial ground in North Salem enlarged. Proviso.
[42.] Conditional clause.

STATUTES.

Powers formerly vested in the board of health of Salem, transferred to the city council. City charter, § 13.

1. By the thirteenth section of the act establishing the city of Salem, all the power and authority by law vested in the board of health for the town of Salem, at the time of the passage of the said act, was transferred to, and vested in the city council, to be carried into execution by the appointment of health commissioners, or in such other manner as the said city council might deem expedient.[1] By the third section of chapter fourth of the acts of 1837, additional to the act establishing the city of Salem, it was provided that the city council may elect health commissioners from either or both branches of the city council.[2]

Health Commissioners. 1837, 4, § 3.

Powers formerly vested in boards of health of towns now vested in city councils of cities. 1849, 211, § 1.

2. By the act of May 2, 1849, it was provided that all the powers vested in, and the duties prescribed to boards of health of towns, by the general laws, should be vested in, and prescribed to city councils of cities,

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[1] It is not only the right, but the duty, of the city government, so far as they may be able, to remove every nuisance which may endanger the health of the citizens. And they have necessarily the power of deciding in what manner this shall be done, and their decision is conclusive, unless they transcend the powers conferred on them by the city charter. Police regulations to direct the use of private property so as to prevent its being pernicious to the citizens at large, are not void, although they may in some measure interfere with private rights without providing for compensation. The property of a private individual may be appropriated to public use in connection with measures of municipal regulation, and in such case compensation must be provided for, or the appropriation will be unconstitutional and void. *Baker* v. *City of Boston*, (12 Pick. Rep. 184.)

[2] See p. 15, *ante*.

in case no special provision to the contrary was made in such laws themselves, or in the special laws applicable to any particular city.

How such powers and duties may be exercised. 1849. 211 § 2.

3. The powers and duties above named, may be exercised and carried into effect by city councils, in any manner which they may prescribe, or through the agency of any persons to whom they may delegate the same, notwithstanding a personal exercise of the same, collectively or individually, is prescribed in the instance of towns, as above referred to. And city councils are authorized to constitute either branch, or any committee of their number, whether joint or separate, the board of health for all, or for particular purposes, within their own cities.

Either branch of council, or any committee, may be board of health.

Nuisances, how and by whom to be removed. Ibid. § 3. 7 Pick. 76. Penalty.

4. Whenever any nuisance, source of filth, or cause of sickness, shall be found on private property, within any city, the board of health, or health officer, shall order the owner, or occupant thereof, to remove the same, at his own expense, within twenty-four hours, or such other time as they shall deem reasonable, after notice served, as provided in the succeeding section; and if the owner, or occupant, shall neglect so to do, he shall forfeit a sum not exceeding twenty dollars, for every day during which he shall knowingly permit such nuisance or cause of sickness to remain, after the time prescribed, as aforesaid, for the removal thereof.

Order to remove nuisances, how to be served. 1849, 211, § 4.

5. The order mentioned in the last section shall be communicated by a written notice, served personally upon the owner or occupant, or their authorized agent, by any person competent to serve a notice in a civil suit; or such notice may be left at the owner, occupant, or agent's last and usual place of abode, if the same be known, and is within the state; and if the owner or agent's residence is unknown, or without the state, the premises being unoccupied, then such notice may be served by posting up the same on the premises, and by

advertising in one or more public newspapers, in such manner, and for such length of time, as the board of health, or health officer, shall deem expedient.

Proceedings when order is not complied with. 1849, 211, § 5. Expenses, by whom paid.

6. If the owner or occupant shall not comply with the order above mentioned, the board of health may cause the said nuisance, source of filth, or cause of sickness to be removed, and all expenses incurred thereby, shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same, if such owner or occupant, or such other person, shall have had actual notice from the board of health of the existence of said nuisance, source of filth, or cause of sickness.

How expenses shall be recovered. Ibid, § 6.

7. All expenses incurred by any town or city in the removal of nuisances, or for the preservation of the public health, and which are recoverable of any private person or corporation, by virtue of any provisions of law, may be sued for and recovered in an action of debt before any court having jurisdiction of the amount claimed.

Fines, &c., to whom to enure, and how recovered. Ibid, § 7. Com. v. Fahey, 5 Cushing. 408.

8. All fines and forfeitures incurred under the general laws, or the special laws applicable to any town or city, or the ordinances, by-laws, and regulations of any town or city, relating to health, shall enure to the use of such town or city; and may be recovered by complaint, in the name of the treasurer,[1] before any justice of the peace of the county, or police court of the city, in which the offence may have been committed.[2]

Physician to the board of health. R. S. 21, § 3.

9. Every board of health may appoint a physician to the board who shall hold his office during their pleasure.

Compensation of physician, &c. Ibid, § 4.

10. The board of health shall establish the salary

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1 And in no other manner. See *Com.* v. *Fahey*, (5 Cush. 408.)

2 The 8th section of stat. 1849, c. 211, repealed the 10th, 11th, and 46th sections of Rev. Stat. c. 21, as inconsistent with the provisions above given.

or other compensation of such physician, and shall regulate all fees and charges of every person employed by them in the execution of the health laws and of their own regulations.

Board of health, to make regulations as to nuisances. &c. R. S. 21, § 5.

11. The board of health shall make such regulations respecting nuisances, sources of filth, and causes of sickness, within their respective towns,[1] and on board of any vessels in their harbors, as they shall judge necessary for the public health and safety; and if any person shall violate any such regulation, he shall forfeit a sum not exceeding one hundred dollars.

May make provision as to infected articles. Ibid § 6.

12. The said board shall also make all regulations, as they may judge necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into, or conveyed from their town, or into or from any vessel; and if any person shall violate any such regulations, he shall forfeit a sum not exceeding one hundred dollars

May make regulations as to interments, &c. Ibid, § 7.

13. The said board shall also make all regulations, which they may judge necessary for the interment of the dead, and respecting burying grounds in their towns.

Notice of their regulations to be published. Ibid, § 8.

14. Notice shall be given, by the board of health, of all regulations made by them, by publishing the same in some newspaper of their town, or, where there is no such newspaper, by posting them up in some public place of the town; and such notice of said regulations shall be deemed legal notice to all persons.

Board to examine into nuisances, &c. Ibid, § 9. 7 Pick. 76.

15. The board of health shall examine into all nuisances, sources of filth, and causes of sickness, that may, in their opinion, be injurious to the health of the inhabitants within their town, or in any vessel within

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[1] The word "town" in the Revised Statutes may be construed to include cities. R. S. 2, § 6, clause 17. See also stat. 1849, c. 211, § 1, *ante*, p. 91, § 2.

the harbor of such town, and the same shall destroy, remove or prevent, as the case may require.[1]

When a party is convicted of a nuisance, the court may order it removed at his expense. R. S. 21, § 12.

16. When any person shall be convicted, on an indictment for a common nuisance, that may be injurious to the public health, the court may, in their discretion, order it to be removed or destroyed, at the expense of the defendant, under the direction of the board of health of the town, where the nuisance is found; and the form of the warrant to the sheriff, or other officer, may be varied accordingly.

Court of common pleas, &c., may issue injunctions in cases of nuisance. Ibid, § 13.

17. The court of common pleas, or any one of the justices thereof, in term time or vacation, may, in all cases, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same, until the matter shall be decided by a jury or otherwise; and may issue all such other writs and processes, and make all such orders and decrees, according to the course of proceedings in chancery, as may be necessary or proper to enforce such injunction; and may dissolve the same, when the court or any one of the said justices shall think it proper.

How board of health may make compulsory examination of premises, when refused, &c. Ibid, § 14.

18. Whenever the board of health shall think it necessary, for the preservation of the lives or health of the inhabitants, to enter any land, building or vessel, within their town, for the purpose of examining into, and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath to any justice of the peace of his county, stating the facts of the case, so far as he has knowledge thereof, and such justice may thereupon issue a warrant, directed to the sheriff or either of his deputies, or to any constable of such town, command-

[1] The 10th and 11th sections of the 21st chapter of the Revised Statutes were repealed by stat. 1849, c. 211, § 8.

ing them to take sufficient aid, and, being accompanied by any two or more members of said board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and the same to destroy, remove, or prevent, under the directions of such members of the board of health.

Board may grant permits for the removal of nuisances, infected articles, or sick persons. Ibid, § 15.

19. The board of health may grant permits for the removal of any nuisance, infected article, or sick person, within the limits of their town, when they shall think it safe and proper so to do.[1]

If the infected person cannot be removed, provision to be made for him, &c. Ibid, § 17. 1838, 158. See § 39, p. *post*.

20. When any person, coming from abroad, or residing in any town within this state, shall be infected, or shall lately before have been infected, with the plague, or other sickness, other than small pox, dangerous to the public health, and the infected person cannot be removed without danger to his health, the board of health shall make provision for him, as directed in the sixteenth section of the twenty-first chapter of the Revised Statutes,[2] in the house in which he may be; and, in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures, as they shall judge necessary, for the safety of the inhabitants.

Persons may be stationed on borders of other states, to examine, &c. R. S. 21, § 18.

21. The board of health of any town near to, or bordering upon, either of the neighboring states, may appoint, by writing under their hands, suitable persons

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[1] The 16th section of the 21st chapter of the Revised Statutes was repealed by stat. 1837, c. 244, § 3.

[2] The section here referred to, which was repealed by stat. 1837, c. 244, § 3, provided, that, in case of such infection, the board of health "shall make effectual provision, in the manner in which they shall judge best, for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without danger to his health, and by providing nurses, and other assistance and necessaries, which shall be at the charge of the person himself, his parents or master, if able, otherwise at the charge of the town to which he belongs; and, in case such person is not an inhabitant of any town, then at the charge of the commonwealth."

to attend at any places, by which travellers may pass from infected places in other states; and the persons, so appointed, may examine such passengers, as they may suspect of bringing with them any infection, which may be dangerous to the public health, and, if need be, may restrain them from travelling, until licensed thereto by the board of health of the town, to which such person may come; and any passenger, coming from such infected place, who shall, without license as aforesaid, travel within this state, unless it be to return by the most direct way to the state from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars.

Any two justices may issue warrants to remove sick persons. Ibid, § 19.

22. Any two justices of the peace may, if need be, make out a warrant, directed to the sheriff of the county, or his deputy, or to any constable, requiring them, under the direction of the board of health, to remove any person, infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries for the accommodation, safety and relief of the sick.

One justice may issue warrrant to secure infected articles. Ibid, § 20.

23. Whenever, on the application of the board of health, it shall be made to appear to any justice of the peace, that there is just cause to suspect that any baggage, clothing or goods, of any kind, found within the town, are infected with the plague or any other disease, which may be dangerous to the public health, such justice of the peace shall, by warrant, directed to the sheriff or his deputy, or to any constable, require him to impress so many men, as said justice shall judge necessary, to secure such baggage, clothing or other goods, and to post said men as a guard over the house or place, where such baggage, clothing or other goods shall be lodged; which guard shall take effectual care to prevent any persons removing or coming near to such baggage, cloth-

ing or other goods, until due inquiry be made into the circumstances thereof.

Justices may impress houses and stores, &c., for safe keeping of goods, &c. Ibid, § 21.

24. The said justice may also, by the same warrant, if it shall appear to him necessary, require the said officers, under the direction of the said board of health, to impress and take up convenient houses or stores, for the safe keeping of such baggage, clothing or other goods; and the board of health may cause them to be removed to such houses or stores, or to be otherwise detained, until they shall, in the opinion of the said board of health, be freed from infection.

Officers may break open houses, shops, &c., and command aid. Ibid, § 22.

25. The said officers, in the execution of such warrant, shall, if need be, break open any house, shop, or other place mentioned in said warrant, where such baggage, clothing, or other goods, shall be; and they may require such aid, as shall be necessary to effect the execution of the warrant; and all persons shall, at the command of either of the said officers, under a penalty not exceeding ten dollars, assist in the execution of the warrant.

Expenses to be paid by owners of goods. Ibid, § 23.

26. The charges of securing such baggage, clothing or other goods, and of transporting and purifying the same, shall be paid by the owners thereof, at such rates and prices, as shall be determined by the board of health.

Town shall make compensation for houses, &c., or services impressed. Ibid, § 24.

27. Whenever the sheriff or other officer shall impress or take up any houses, stores, lodging, or other necessaries, or shall impress any men, as provided by law, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town, in which such persons or property shall have been so impressed.

Board of health may remove the occupants of any cellar, &c., occupied as a dwelling house, which is unfit for the purpose, and a cause of nuisance, &c. 1850, 108.

28. Whenever the board of health of any city or town shall be satisfied, upon due examination, that any cellar, room, tenement, or building, occupied as a dwelling place, within such city or town, is unfit for that purpose, and a cause of nuisance or sickness, either to the occupants or to the public, such board of health may

issue a notice in writing, to such persons, or any of them, requiring them to remove from, or quit such cellar, room, tenement, or building, within such time as the said board of health may deem reasonable. And if the person or persons so notified, or any of them, shall neglect or refuse so to remove and quit, within the time mentioned, it shall be lawful for such board of health to remove them forcibly, and to close up such cellar, room, tenement, or building, and the same shall not be again occupied as a dwelling place, without the consent in writing, of the board of health, under a penalty of not less than ten, nor more than fifty dollars, to be recovered by indictment of the owner or owners, if they shall have knowingly permitted the same to be so occupied.

Removal of prisoners attacked with diseases in jail. R. S. 21. § 25.

29. Whenever any person, confined in any common jail, house of correction, or work house, shall be attacked with any disease which, in the opinion of the physician of the board of health, or of such other physician as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the town, the board of health shall, by their order in writing, direct the removal of such person to some hospital, or other place of safety, there to be provided for and securely kept, so as to prevent his escape, until their further order; and if such person shall recover from the disease, he shall be returned to the said prison or other place of confinement.

Return of removal to be made to the court. Ibid. § 26.

30. If the person so removed shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the court, from which the process was issued for committing such prisoner; and no prisoner, removed as aforesaid, shall be considered as having thereby committed an escape.

Such removal shall not be an escape.

QUARANTINE.

Towns may establish a quarantine ground. Ibid, § 27.

31. Any town[1] may establish a quarantine ground, in any suitable place, either within or without its own limits; provided, that, if such place shall be without its limits, the assent of the town, within whose limits it may be established, shall be obtained therefor.

Two or more towns may establish common quarantine ground. Ibid, § 28.

32. Any two or more towns may, at their joint expense, establish a quarantine ground for their common use, in any suitable place, either within or without their own limits; provided, that if such place shall be without their limits, they shall obtain the assent of the town, within whose limits such place may be.

Board of health may establish the quarantine of vessels. Ibid, § 29.

33. The board of health in each seaport town may, from time to time, establish the quarantine, to be performed by all vessels arriving within the harbor of such town; and may make such quarantine regulations, as they shall judge necessary for the health and safety of the inhabitants.

Quarantine regulations to extend to all persons &c. Ibid. § 30.

34. The quarantine regulations, so established, shall extend to all persons, and all goods and effects, arriving in such vessels, and to all persons, who may visit or go on board the same.

To be binding on all persons after public notice. Ibid, § 31. See § 14, *ante*, p. 94.

35. The quarantine regulations aforesaid, after notice thereof shall have been given, in the manner above provided, shall be observed by all persons; and any person who shall violate any such quarantine regulation, shall forfeit a sum not less than five dollars, nor more than five hundred dollars.

Vessels to be ordered to quarantine ground. R. S. 21, § 32.

36. The board of health, in each seaport town, may, at all times, cause any vessel arriving in such port, when such vessel or the cargo thereof shall in their opinion be foul or infected, so as to endanger the public health, to be removed to the quarantine ground, and be thoroughly purified, at the expense of the owners, consignees, or persons in possession of the same; and they may also

[1] See note to § 11, *ante*.

cause all persons, arriving in or going on board such infected vessel, or handling such infected cargo, to be removed to any hospital under the care of said board of health, there to remain under their orders.

Penalty if master, seaman, &c., refuse to make answer on oath, &c. Ibid, § 33.

37. If any master, seaman, or passenger, belonging to any vessel, on board of which an infection may then be, or may have lately been, or suspected to have been, or which may have been [*at*], or which may have come from, any port where any infectious distemper prevails, that may endanger the public health, shall refuse to make answer on oath to such questions as may be asked him, relating to such infection or distemper, by the board of health of the town, to which such vessel may come, (which oath any member of said board may administer,) such master, seaman or passenger so refusing, shall forfeit a sum not exceeding two hundred dollars; and, in case he be not able to pay said sum, he shall suffer six months' imprisonment.

Quarantine expenses to be paid by such person or owner. Ibid, § 34.

38. All expenses incurred on account of any person, vessel or goods, under any quarantine regulations, shall be paid by such person, or the owner of such vessel or goods, respectively.

DANGEROUS DISEASES.

Board of health to provide for safety of inhabitants, when persons are infected with dangerous sickness. 1837, 244, § 1. 1848, 119, § 1.

39. Whenever any person coming from abroad or residing in any town in this state, shall be infected, or shall lately have been infected, with the plague, or other sickness dangerous to the public health, except the small pox, the board of health of said town shall make effectual provision in the manner which they shall judge best for the safety of the inhabitants, by removing such sick or infected person to a separate house or otherwise, and by providing nurses and other assistance and necessaries; which shall all be at the charge of the person himself, his parents or master, if able, otherwise at the charge of the town to which he belongs; and in case such person is not an inhabitant

of any town in this state, then at the charge of the Commonwealth.

Board to provide hospitals immediately, when any dangerous disease breaks ou unexpectedly
1837, 244, § 2.
1848, 119, § 1.

40. When any disease dangerous to public health, other than the small pox, shall break out in any town, the board of health thereof shall immediately provide such hospital or place of reception for the sick and infected as they shall judge best for their accommodation, and the safety of the inhabitants, and such hospitals and places of reception shall be subject to the regulations of the said board of health, in the same manner as is provided in the case of established hospitals, in the succeeding sections, and the said board of health may cause such sick and infected person to be removed to such hospital or places of reception, unless the condition of the sick or infected person be such as not to admit of his removal without danger to his health, in which case the house or place where such person shall remain shall be considered as a hospital to every purpose aforesaid; and all persons residing in or in any way concerned with the same, shall be subject to the regulations of said board of health, as before provided.

Hospitals for the small pox, &c., may be provided by towns.
R. S. 21, § 35.

41. The inhabitants of any town may establish, within the same town, and be constantly provided with one or more hospitals for the reception of persons, having the small pox, or other disease, which may be dangerous to the public health.

To be under the orders of the board of health.
Ibid, § 36.

42. All such hospitals shall be subject to the orders and regulations of the board of health, or a committee of such town appointed for that purpose.

Not to be established within 100 rods of houses in adjoining town, unless &c.
Ibid, § 37.

43. No such hospital shall be established, within one hundred rods of any inhabited dwelling house, situated in any adjoining town, without the consent of such adjoining town.[1]

Physician and

44. When any hospital shall be so established, the

[1] The 38th section of the 21st chapter of the Revised Statutes was in effect repealed by stat. 1838, c. 158.

physician, the persons inoculated or sick therein, the nurses, attendants, and all persons, who shall approach or come within the limits of the same, and all such furniture and other articles, as shall be used or brought there, shall be subject to such regulations, as may be made by the board of health, or the committee appointed for that purpose.[1]

others, in hospitals, to be subject to board of health. Ibid, § 39.

45. When any disease dangerous to the public health, other than the small pox, is found to exist in any town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means, which in their judgment shall be most effectual for the common safety.

Selectmen and board of health shall give notice of dangerous disease by red flags, &c. Ibid, 21 § 41. 1838, 158.

46. If any physician or other person, in any of the hospitals or places of reception before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, the person so offending shall, for each offence, forfeit a sum not less than ten nor more than one hundred dollars.

Penalty on physicians and others, for violating regulations. R. S. 21, § 42. 1838, 158.

47. When any householder shall know that any person within his family is taken sick of the small pox, or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells; and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars.[2]

Every householder to give notice of small pox, &c. in his family. R. S. 21, § 43. 1838, 158. 1840, 39.

48. When any physician shall know that any per-

Penalty on phys-

1 The 40th section of R. S. c. 21, was repealed by stat. 1837, c. 244, § 3. See also 1838, c. 158.

2 The stat. 1838, c. 158, repealed so much of R. S. c. 21, §§ 16, 17, 38, 40, 41, 42, 43 and 44, as relates to the small pox; but stat. 1840, c. 39, repealed so much of stat. 1838, c. 158, as related to said 43d and 44th sections.

Icians, for not giving notice of small pox &c. R. S. 21, § 44. 1838 158. 1840, 39.

son, whom he is called to visit, is infected with the small pox, or any other disease dangerous to the public health, such physician shall immediately give notice thereof to the selectmen, or board of health of the town in which the diseased person may be; and every physician, who shall refuse or neglect to give such notice, shall forfeit for each offence a sum not less than fifty, nor more than one hundred dollars.

Towns may provide for inoculation of its inhabitants, and defray expenses. R. S. 21, § 45.

49. Each town may, at any meeting, make suitable provision for the inoculation of the inhabitants with the cow pox, under the direction of the board of health of each town, or of a committee chosen for that purpose; and they shall raise all necessary sums of money, to defray the expenses of such inoculation, in the same manner as other town charges are paid.[1]

OFFENSIVE TRADES.

Mayor and aldermen to assign places for offensive trades. Ibid, § 47.

50. The selectmen of every town,[2] when they shall judge it necessary, shall from time to time, assign certain places for the exercising of any trade or employment, offensive to the inhabitants, or dangerous to the public health; and they shall forbid the exercise of either of them in places not so assigned; and all such assignments shall be entered in the records of the city; and they may be revoked, when the city officers shall think proper.

If such place become a nuisance, court of common pleas may revoke &c. Ibid, § 48.

51. When any place or building so assigned shall become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or shall become otherwise hurtful or dangerous to the neighborhood or to travellers, and the same shall be made to appear, on a trial before the court of common pleas for the county, upon a complaint made by the board of health or by

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[1] Section 46 of R. S. c. 21, was repealed by stat. 1849, c. 211, § 8

[2] See note to § 11, *ante*, p. 94; also, City Charter, § 8.

any other person, the said court may revoke such assignment, and prohibit the further use of such place or building, for the exercise of either of the aforesaid trades or employments, and may cause such nuisances to be removed or prevented.

52. Any person, injured either in his comfort or the enjoyment of his estate, by any such nuisance, may have an action on the case, for the damage sustained thereby; in which action, the defendant may plead the general issue, and give any special matter in evidence.

Action for damages from nuisances. Ibid, § 49. Shaw v. Cummisky, 7 Pick. 76.

GENERAL PROVISIONS.

53. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding two hundred dollars.

Selling corrupt or unwholesome provisions, without notice. R. S. 131, § 1.

54. If any person shall fraudulently adulterate for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars, and the articles so adulterated shall be forfeited and destroyed.

Adulterating food or liquors. Ibid, § 2.

55. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding four hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

Adulterating drugs or medicines. Ibid, § 3.

56. If any person, not being authorized by the board of health, overseers of the poor, directors of any work house, or selectmen of any town, or by the directors of the house of industry, overseers of the poor, or mayor

Violation of sepulture. R. S. 130, § 19.

and aldermen of the city of Boston, shall wilfully dig up, disinter, remove, or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall be punished by imprisonment in the state prison, not more than one year, or in the county jail, not more than two years, or by fine not exceeding two thousand dollars.

Penaly for selling tainted fish for food. R. S. 28, § 90.

57. If any person shall sell within this state, or shall export therefrom, any tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, he shall forfeit the sum of ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity thereof; and upon any trial in such case, the burden of proof shall be upon the defendant, to show for what purpose such fish was so exported or sold.[1]

An Ordinance relating to public health.[2]

Be it ordained by the city council of the city of Salem, as follows:

Execution of health laws and ordinances committed to city marshal August 17, 1853.

SECT. 1. The department of internal and external police, so far as it regards the preservation of the health of the city, is hereby placed under the superintendence of the city marshal, whose duty it shall be, and he shall have the power, to carry into execution all the ordinances, rules and laws made by the city council,

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1 Certain provisions in relation to health, which were formerly in force in the city of Salem, but which appear to have been in effect repealed by late enactments, may be found in Massachusetts Special Laws, vol. ii., pp. 317, 399.

2 Passed August 17, 1853.

relative to causes of sickness, nuisances, and sources of filth, that may be injurious to the health, or may affect the comfort of the inhabitants of the city, which do or may exist within the limits thereof; subject always to the direction, authority and control of the mayor and aldermen; and it shall be the duty of the city marshal to cause all such nuisances, sources of filth, and causes of sickness, to be prevented, removed, or destroyed, as the case may require, conformably to the ordinances of the city council, as aforesaid, and the laws of the Commonwealth; and to this department shall belong the care of the streets, the care of the common sewers, and the care of the vaults, and whatever else affects the health, security and comfort of the city, from causes or means arising or existing within the limits thereof.

Mayor and aldermen may cause persons sick with contagious disease to be removed.

SECT. 2. The mayor and aldermen shall have power to remove, or cause to be removed, from any dwelling-house or other place within said city, any person or persons sick with any contagious or infectious disease, or any person who may have been exposed to such contagious or infectious disease, to any hospital or place within the city, proper for the reception of such sick or exposed persons; and in case any person sick with such contagious or infectious disease in any house or other place within the said city, cannot be removed without danger to his or her health, the mayor and aldermen shall have power to cause any house or tenement contiguous to be vacated by the removal of the occupant thereof, for such time as they shall think expedient, and the safety of the inhabitants may require.

Mayor and aldermen may cause houses to be vacated.

Owners shall furnish houses with suitable drains, privies, &c.

SECT. 3. The owner or owners of each and every dwelling house within the city, shall furnish the same with a sufficient drain and cesspool under ground, to carry off the waste water, and also a suitable privy, the vault of which shall be sunk under ground, and be built in the manner hereinafter prescribed; and of a

sufficient capacity in proportion to the number of inhabitants of such tenement, which drain, cesspool, privy and vault shall be in common, and subject to the use of all said inhabitants.

Proceedings where a suitable drain, &c., is not constructed.

SECT. 4. If the mayor and aldermen shall at any time be satisfied that any dwelling house is not provided with a suitable drain, cesspool, privy and vault, as aforesaid, they may give notice in writing to the owner thereof, or his agent, if either be an inhabitant of the city, or if otherwise, public notice in two newspapers printed in Salem, requiring such owner or agent within such time as they shall appoint, to cause a proper and sufficient drain, cesspool, privy, and vault to be constructed for such tenement, to be common and subject to the use of all the inhabitants thereof; and in case of neglect or refusal to obey such notice, the mayor and aldermen shall have power to cause such drain, cesspool, privy or vault to be made for such dwelling house, the expense of which shall be paid by such owner or agent.

Mayor and Aldermen may remove persons from tenements where too numerous, or unprovided with vaults, &c.

SECT. 5. Whenever, upon due examination, it shall appear to the mayor and aldermen, that the number of persons occupying any tenement or building in the city is so great as to cause nuisances or sickness, or the accumulation of filth, or that any tenements or buildings are not furnished with vaults constructed according to the provisions of this ordinance, and with sufficient privies, it shall be the duty of the mayor and aldermen, and they are hereby authorized and empowered to remove such persons or occupants, or any of them, from such tenement or building. And the mayor and aldermen shall thereupon issue their notice in writing, to such persons, requiring them to remove from and quit such tenement or building within such time as the mayor and aldermen shall deem reasonable. And if the person or persons so notified, or any of them, shall neglect or refuse to move, within the time men-

tioned in such notice, the mayor and aldermen are hereby authorized thereupon forcibly to remove such person or persons from the same.

How vaults and privies shall be constructed.

SECT. 6. All vaults or privies hereafter built, shall be so constructed, that the inside of the same shall be at least two feet distant from the line of every adjoining lot, unless the mayor and aldermen or the owner of said adjoining lot shall otherwise agree and consent, and also from every street, lane, alley, court, square, or public place, or public or private passage way; there shall be no communication between any vault or privy, and any common sewer or drain, and every vault shall be made tight; and whenever any drain, cesspool, vault or privy shall become offensive, the same shall be cleansed, and the owner or his agent, or the occupant of the land, in which any drain, cesspool, vault or privy may be situated, the state and condition of which shall be in violation of the provisions of this ordinance, shall cause the same to be removed, cleansed, altered, amended or repaired, within a reasonable time after notice in writing to that effect, given by the mayor and aldermen or the city marshal, and in case of neglect or refusal, the same shall be performed under the direction of the mayor and aldermen, at the expense of the owner, agent, or occupant aforesaid.

Offensive vaults &c. shall be cleansed.

Regulations as to cleansing vaults.

SECT. 7. No vault shall be opened between the fifteenth day of April and the fifteenth day of October, in each year; unless on inspection caused to be made, the mayor and aldermen shall be satisfied that the same is absolutely necessary for the health or comfort of the inhabitants; in which case they may grant special permission, under such restrictions as they may deem expedient. *Provided always*, that no vault shall, during any part of the year, be opened and its contents removed between sunrise and ten of the clock in the evening.

Further regulations as to cleansing vaults.

SECT. 8. No person shall remove the contents of any privy or vault, except in a water-tight cart or wagon,

which shall have been examined and approved by the city marshal; and no person conducting any such cart or wagon, shall cause the same to stop or stand in any of the streets, or to proceed through any other streets than may have been assigned for the purpose by the city marshal, under the direction of the mayor and aldermen.

Regulations as to cellars &c. in a state of nuisance.

SECT. 9. No person shall suffer any waste or stagnant water to remain in any cellar, or upon any lot, or vacant ground, by him owned or occupied. Whenever it shall appear to the mayor and aldermen, that any cellars, lots or vacant grounds are in a state of nuisance, or so situated that they may become a nuisance, and the health of the inhabitants be endangered, it shall be their duty, and they are authorized to cause a notice in writing to be served upon the owner or occupants thereof; and if there should be no occupants, and the owners should not reside in the city, then to give notice by advertising in two of the newspapers printed in said city, directing said owners or occupants to have said nuisance, or cause of nuisance, removed, by draining, filling up, or otherwise, in the manner prescribed in such notice. And in case of neglect or refusal to obey said notice, the mayor and aldermen shall have power to remove the same by filling up, draining, or otherwise as they shall deem expedient, and said owners or occupants shall defray the expense thereof.

No filth to be thrown into streets, &c.

SECT. 10. No person or persons, unless by leave of the mayor and aldermen, shall throw or deposite, or cause to be thrown or deposited in any street, court, square, lane, alley, public square, or vacant lot, or into any pond, any dirt, saw-dust, soot, ashes, cinders, shavings, hair, shreads, manure, oyster or lobster shells, waste water, rubbish, or filth of any kind, or any animal or vegetable matter or substance whatever. Nor shall any person or persons deposit any dead animal, or any foul or offensive ballast, into any dock, or any

other of the waters adjoining the city. Nor shall any person land any foul or offensive animal or vegetable substance within the city.

Penalty.

SECT. 11. If any of the substances in the preceding section mentioned, shall be thrown or carried from any house, ware-house, shop, cellar, yard or other place, into any street, lane, alley, court, square, public place, or vacant lot, as well the owner of such house, or other place, whence the same shall have been thrown or carried, as the occupant thereof, and the person who actually threw and carried the same, shall severally be held liable for such violation of this ordinance; and all such substances shall be removed from the street, lane, alley, court, square, or public place, or vacant lot, by, and at the expense of the owner or occupant of the house, or other place whence the same were thrown or carried, within two hours after personal notice in writing given by the mayor and aldermen, or the city marshal.

Filth, &c. may be removed, by order of the mayor and aldermen.

SECT. 12. All dirt, saw-dust, cinders, shavings, hair, shreds, manure, oyster or lobster shells, waste water, or any animal or vegetable substance, rubbish, or filth of any kind, in any house, ware-house, cellar, yard, or other place, which the mayor and aldermen or city marshal shall deem it necessary for the health of the city to be removed, shall be carried away therefrom by and at the expense of the owner or occupant of such house or other place where the same shall be found, and be removed to such place as shall be directed, within four hours after notice in writing to that effect, given by the mayor and aldermen, or the city marshal.

Diseased provisions not to be sold.

SECT. 13. No person shall sell or offer for sale, or have in his possession in the market, or in any other place, any unwholsome, stale or putrid meat, fish or fruit, or other article of provisions; or any meat which has been blown, raised or stuffed; or any diseased or measly pork. And no person shall bring on shore, or shall sell, or offer for sale in the city, any fresh fish,

Sale and keeping of fish regulated.

until the same shall be cleansed of their entrails and refuse parts; and no person shall sell, or offer for sale in the city any fresh fish, unless the same shall be kept in the fish houses or other places which may be assigned for the purpose by the mayor and aldermen, or in carts so prepared that the fish may be well secured from the rays of the sun. *Provided*, that from the first day of June to the first day of October, no person shall convey any fish for sale through the streets in carts or otherwise, except before nine o'clock in the forenoon, or after four o'clock in the afternoon, and any person offering fish for sale shall at all times keep his stand or cart clean and in good order.

Proviso.

Green or tainted hides, &c., not to be landed without permit.

SECT. 14. No person shall land on any wharf or other place, or shall otherwise bring into the city, from the first day of May to the first day of November, green or tainted hides, or damaged grain, rice, or coffee, without a permit therefor from the mayor and aldermen, and in such manner as they shall direct.

Persons not complying with notice to remove a nuisance to be prosecuted.

SECT. 15. Whenever any person shall have been duly notified to remove any nuisance, or to cleanse, alter or amend any vault, or to perform any other act or thing which it may be his duty to perform, in obedience to the laws of the Commonwealth, or the ordinances for the preservation of the health of the city, which are now, or which hereafter shall be made by lawful authority, and the time limited to the performance of such duty shall have elapsed, without a compliance with such notice, the city marshal shall cause all persons who shall violate or disobey the said health laws and regulations, to be forthwith prosecuted. And in case, in the opinion of the mayor and aldermen, it shall be for the health or comfort of the inhabitants that any particular nuisance should be forthwith removed, and without delay, it shall be their duty to cause the same to be removed accordingly at the expense of the owner or owners of the land upon which said nuisance exists.

Nuisance to be removed at the expense of the owner of the premises.

SECT. 16. The city marshal or his deputies or any person authorized by the mayor for that purpose, shall and may at any time between sunrise and sunset, enter into any building within the city, for the purpose of examining into, destroying, removing or preventing any nuisance, source of filth, or cause of sickness therein, or in any cellar belonging thereto. And if any person shall refuse to admit such officer or other person so authorized into said building, the city marshal shall on oath complain to the justice of the police court, and shall apply for a warrant according to the statute in such case made and provided, and shall thereupon proceed, under the authority of said court, to examine such building or other place, and to destroy, remove or prevent any nuisance, source of filth, or cause of sickness, that may be found there, in such manner as the mayor and aldermen shall direct. And the said city marshal or his deputy, or any person authorized as aforesaid, shall and may at any time between sunrise and sunset, enter into any yard or lot of ground, or into any out-house, and examine any alley, sink, sess-pool, privy, vault, public or private dock or slip, or drain, or sewer, and shall report to the mayor and aldermen all such cases as the health or security of the city may require to be cleansed, altered or amended.

City marshal, &c. may enter houses for the purpose of removing nuisances, &c.

SECT. 17. Any person offending against any of the provisions of this ordinance, shall forfeit and pay a sum not less than one nor more than twenty dollars, to be recovered by complaint before the justice of the police court.

Penalty, how recovered.

An Ordinance constituting a board of health.[1]

Be it ordained by the city council of the city of Salem, as follows:

[18.] The mayor and aldermen of the city of Salem

Mayor and alder-

[1] Passed August 27, 1849.

men to constitute board of health. August 27, 1849.

shall constitute the board of health of the city, and shall exercise all the powers and perform all the duties now vested in the city council as a board of health.

An Ordinance establishing and regulating the quarantine of vessels.[2]

Be it ordained by the city council of the city of Salem, as follows:

Mayor and aldermen shall superintend the quarantine department, &c. May 13, 1839.

[19.] SECT. 1. The department of the quarantine shall be placed under the superintendence of the mayor and aldermen, and they shall have the sole and entire control of the hospital upon the neck, and all the vessels lying at quarantine as hereafter directed, and of all persons employed at said hospital, or on board said vessels. And it shall be their duty to take care that all the ordinances of the city, and laws of the Commonwealth relating to the quarantine of vessels are duly executed and enforced. And it shall likewise be the duty of the mayor and aldermen to provide a suitable number of red flags, and whenever any vessel or vessels shall be ordered to the quarantine ground for purification, the keeper of said hospital shall hoist one of said flags on a flagstaff to be erected for that purpose. And the master of every vessel ordered to perform quarantine, shall hoist one of the said flags on the head of the mainmast, there to be kept during the day time, so long as said vessel or vessels shall remain at said ground.

Quarantine physician to be chosen, and his duties.

[20.] SECT. 2. In the month of May annually, and as much oftener as the good of the city may require, a visiting physician shall be chosen by concurrent vote of the city council, whose duty it shall be, at such times as

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2 Passed May 13, 1839.

the mayor nnd aldermen shall direct, to visit every vessel arriving, liable to quarantine; to direct in what manner she shall be cleansed if necessary, and what articles from her shall be landed, washed, buried or destroyed, and what articles of cargo may be unladened; to direct the care and attendance of the sick, for whom he shall prescribe and supply medicine according to his best skill; to report every day to the mayor the situation of every sick person; to direct the pilots where, and in what particular place, vessels shall be anchored, (who are hereby required to obey such directions,) and to grant a certificate to any passenger by him discharged from quarantine, at any time before the discharge of the vessel in which such passenger arrived, and to give a certificate to the master of each vessel, when in his discretion he shall think proper, that such vessel be discharged from quarantine. And it shall also be the duty of such visiting physician to report to the mayor and aldermen, the state and condition of said hospital, of the vessels lying at the quarantine ground, and of the accommodations provided for the sick, or of the quarantine of vessels whenever he shall be thereunto required by the mayor and aldermen, or whenever the said visiting physician shall deem it expedient to make such report; and also to recommend, from time to time, such measures as he may deem expedient, for the better execution of the ordinances of the city, relative to the quarantine of vessels, or for the convenience and comfortable accommodation of persons under quarantine.

Salary of quarantine physician.

[21.] Sect. 3. The said visiting physician shall receive such salary as the city council may grant and authorize, and he may also be allowed to charge sick persons for his attendance and medicine in extraordinary cases, such reasonable sums respectively, as the mayor and aldermen may approve; and the said physician shall hold his office during the pleasure of the city council.

Tenure of office.

Keeper of the hospital, and his duties.

[22.] SECT. 4. The mayor and aldermen shall appoint, as often as they may deem expedient, a keeper of the hospital, whose duty it shall be to attend to the cleansing and purification of all persons, vessels, clothing, bedding and other things at quarantine, agreeably to the directions of the visiting physician; to board and attend the sick, and provide nurses for them; to communicate to the mayor and aldermen information of any event which may require the attendance of the visiting physician, and to perform such other duties as may be required of him by the mayor and aldermen; and said keeper shall receive such compensation as the city council may authorize, and shall be allowed to charge such reasonable sums for the board and nursing of each sick person as the mayor and aldermen may determine.

Compensation.

Quarantine of vessels.

[23.] SECT. 5. A quarantine shall be had of all vessels, their officers and crews, passengers and cargoes, that come within the harbor of Salem, on board of which any person shall have died, or been sick of any contagious, infectious or malignant disease, during the passage to Salem, or which are foul or infected after their arrival, or which are from, or have brought their present cargo, or part thereof, from any port or place where any infectious, contagious or malignant disease doth prevail, or recently hath prevailed. *Provided*, however, that, in the latter case public notice shall first be given by the mayor and aldermen of such fact of the prevalence of infectious, contagious or malignant disease.

Quarantine ground.

[24.] SECT. 6. The said quarantine shall be had and performed at an anchorage ground near the hospital upon the neck, under the direction of the visiting physician, and shall continue on every such vessel until the master shall receive a certificate from the said visiting physician that he may be discharged; *provided*, however, that in case of unreasonable delay by the visiting physician to grant such certificate, the owner,

agent, or consignee of such vessel, or any part of her cargo, may apply to the mayor and aldermen, who may, on being satisfied of the propriety of discharging such vessel from quarantine, issue such certificate; and any passenger in such vessel may be discharged by said physician from quarantine at any time.

Discharge from quarantine.

[25.] SECT. 7. The master of every vessel discharged from quarantine, shall within twenty-four hours after such discharge, deliver at the mayor's office, the certificate and flag he shall have received of the visiting physician, and pay the sum of eight dollars, for which he shall be entitled to a certificate from the city clerk to authorize his entry at the custom house.

No persons to board vessels performing quarantine.

[26.] SECT. 8. During the time that any vessel is performing quarantine, no person shall go on board thereof, except those employed by, or under the visiting physician, and no person shall go within a line upon the land adjoining said hospital, to be designated by said visiting physician, and every person who shall transgress in either of these cases, shall be liable to be considered as contaminated with infection, and held to undergo purification, in the same manner, and under the same regulations and restrictions as those performing quarantine at said hospital, and shall there remain until discharged by the visiting physician, and the said physician, or the keeper of said hospital, may forcibly detain any person for the purposes aforesaid.

Permits to visit hospital during time of quarantine.

[27.] SECT. 9. The mayor and aldermen may permit any person to visit the hospital during the time of quarantine, carrying a certificate from the city clerk: *provided*, that such certificate shall be in force only on the day of its date, and the succeeding day. And without such permit, no person shall visit said hospital, or any vessel lying at quarantine, during the time of said quarantine.

Penalty.

[28.] SECT. 10. Any person offending against any of the provisions of this ordinance, shall forfeit and pay

a sum not less than three, nor more than twenty dollars, to be recovered by complaint before the justice of the police court.

An Ordinance relating to the burial of the dead.[1]

Be it ordained by the city council of the city of Salem, as follows:

Repealing clause. August 9, 1841.

[29.] SECT. 1. The thirty-eighth ordinance, passed on the thirteenth day of July, 1840, is hereby repealed.

Howard street burial ground enlarged.

[30] SECT. 2. The burial ground in Howard street shall be forthwith enlarged, by annexing thereto so much of the city's land lying westward thereof, as the mayor and aldermen, with the concurrence of the common council, may lay out.

No tombs to be built, except.

[31.] SECT. 3. No tombs shall be built in any of the burial grounds, nor in the city lots in the Harmony Grove cemetery; and no new graves shall be dug in any of the burial grounds, except the new portion of the burial ground in Howard street, the burial ground in North Salem, the burial ground belonging to the Society of Friends, and the quarantine burial ground upon the Neck; *provided*, that if in either of the burial grounds, there has been a special reservation of a suitable space for a single grave for the purpose of burying a surviving, by the side of or above a deceased relative, and the fact of such reservation shall be proved to the satisfaction of the mayor and aldermen, and it shall also be proved to their satisfaction that no other interment has been made in the space thus reserved, they may grant special permission in writing for the burial therein of the person for whom such space shall appear to have been reserved.

Proviso.

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[1] Passed August 9, 1841.

[32.] SECT. 4. Except so far as is herein provided, all burials and re-interments shall be subject to such regulations as the mayor and aldermen, in the exercise of the powers conferred by the laws of the Commonwealth upon the boards of health in towns, shall prescribe. Burials and re-interments.

[33.] SECT. 5. The mayor and aldermen shall annually appoint a superintendent of burials, who shall be responsible for the decent, orderly and faithful management of funerals, and for a strict compliance with the ordinances of the city, and the laws of the Commonwealth, in relation to the burial of the dead. The superintendent thus appointed shall be subject to removal at the pleasure of the mayor and aldermen; and a vacancy in the office shall be forthwith supplied by a new appointment. It shall be the duty of the superintendent of burials, under the direction of the mayor and aldermen, to take the care and oversight of the several burial grounds, to detect and prosecute trespassers, and generally to exercise all the power and authority vested in the city council, in relation to the police of burial grounds. It shall also be his duty as soon as he is informed of the decease of any person within the limits of the city, to take the personal charge and oversight of all necessary arrangements for the removal and burial of the body of the deceased, and for the funeral procession, subject to such general or particular directions as he may at any time receive from the mayor and aldermen. It shall also be his duty, within one day after the burial or removal from the city of the body of any deceased person, to deliver to the city clerk a certificate showing the name, age, and residence of the deceased, the family to which he or she belonged, the disease of which he or she died, the date of the death and interment or removal, and any other particulars which may be prescribed by the mayor and aldermen, who shall cause blank forms of the certificate to be printed, and

Superintendent of burials appointed.

Vacancy in the office.

Duties of superintendent.

To take personal charge of burials.

To deliver certificate of name &c. of deceased to city clerk.

to be furnished to the superintendent of burials by the city clerk.

Assistants appointed, and their duties.

[34.] SECT. 6. The mayor and aldermen shall also annually appoint two assistants, one of whom shall be associated with the superintendent in every burial, and under his direction shall open and close the tomb or grave, conduct the funeral car and furnish a horse therefor, and generally perform such services in aid of the superintendent, as shall be prescribed by the mayor and aldermen. One of the assistants shall be thus employed in all the burials in the Harmony Grove cemetery, and the other shall be employed in all burials elsewhere; and they shall be subject to removal at the pleasure of the mayor and aldermen, and a vacancy in the office shall be forthwith supplied by a new appointment.

Disability of superintendent provided for.

[35.] SECT. 7. In case of the absence, sickness, or temporary disability of the superintendent of burials, his duties shall be performed by one of the assistants, who shall be designated for this purpose by the mayor and aldermen; and in case of the absence, sickness, or temporary disability of either of the assistants, his duties shall be performed by such other person as the superintendent of burials may see fit to employ.

Funeral car.

[36] SECT. 8. A funeral car, to be provided by the mayor and aldermen, shall be placed under the charge of each assistant, and shall be kept in such place and under such regulations as the mayor and aldermen shall prescribe.

Compensation of superintendent and assistants.

[37.] SECT. 9. As a compensation for the services to be performed by himself and one assistant, in conformity to the provisions of this ordinance, the superintendent of burials shall be entitled to demand and receive from any person liable to pay the same, the sum of four dollars for the burial of every person of the age of twelve years and upwards, and the sum of two dollars and fifty cents for the burial of every child of less

than twelve years of age, and the amount thus received shall in every case of persons of twelve years of age and upwards, be equally divided between the superintendent and the assistant employed; and in every case of children under twelve years of age, three fifths of the sum allowed shall be paid to the assistant. In every case in which the superintendent of burials shall deem it necessary, or shall be requested by the family of the deceased to employ an additional assistant, he shall be authorized and required to employ such assistant as may be designated by the family of the deceased, and shall charge for the services of such assistant the sum of seventy-five cents, which he shall collect and pay to the person thus employed. At least once in every year, and as much oftener as may be required by the mayor and aldermen, the superintendent of burials shall make a report in writing, showing the amount of fees actually received by him, and the amounts paid to the assistants, duly vouched by their respective receipts.

Return of fees.

[38.] SECT. 10. Whenever any person shall decease within the limits of the city, it shall be the duty of the nearest relative, or of the person in whose house the deceased may have resided, or of any other person who may have first become informed of the event, to cause the same to be immediately made known to the superintendent of burials, by giving personal or written notice at his place of residence, or at his office in the city hall.

Immediate notice to be given of decease of any person to the superintendent.

[39.] SECT. 11. No person, except the superintendent of burials, or one of the assistants acting in his behalf, shall bury or remove, or cause to be buried or removed, the body of any deceased person, or shall undertake the management of any funeral; *provided*, that this prohibition shall not be construed to apply to the burial of inmates of the almshouse, which shall be under the control of the overseers of the poor, nor to the burial in the private lots in the Harmony Grove cemetery, of deceased persons belonging to other towns, whenever the same shall take place in conformity to the

Burials by other persons prohibited.

Proviso.

regulations established by the board of health of such towns respectively.

Penalty, [40.] SECT. 12. Any person who shall be guilty of a violation of any of the provisions of this ordinance, or of any of the regulations which may be prescribed by the mayor and aldermen in conformity thereto, shall forfeit and pay a sum of not less than two, nor more than twenty dollars, to be recovered for the use of the city, by a complaint of the superintendent of burials before the justice of the police court.

An Ordinance in addition to an ordinance regulating the burial of the dead.[1]

Be it ordained by the city council of the city of Salem, as follows:

Burial ground in North Salem enlarged. Sept. 28, 1846. [41.] SECT. 1. That Thomas Symonds, jr., be allowed to annex to the burial ground in North Salem, his lot of land lying east of, and adjoining the same, which is bounded southerly by Orne street, easterly by land of Jonathan B. Osborne, and northerly and westerly by said burial ground; and that said land when so annexed, shall belong to, and be considered as part of said burial ground, subject to all the rules and regulations now in force, and such as may hereafter be adopted by the city council for regulating the burial of the dead:

Proviso. *Provided*, however, that Thomas Symonds, jr., with such others as may associate with him, their successors and assigns, shall have the right to divide said land into lots, and to fence and ornament them according to their own taste and convenience. They shall also be allowed to build tombs on said lots, and forever use said tombs and lots for burial places for themselves and their families; anything contained in the ordinance, to which this is an addition, or in any ordinance which may hereafter be adopted by the city council, regulating the burial of the dead, to the contrary notwithstanding.

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1 Passed September 28, 1846.

[42.] SECT. 2. That said Thomas Symonds, jr., his associates, successors and assigns, shall be required to build the fence in front of said land by Orne street, and on the eastern bounds of said lot, to the satisfaction of the mayor and aldermen, which shall ever after be kept in repair by the city. Conditional clause.

INTELLIGENCE OFFICES.

STATUTE.	
1. No person shall establish or keep an intelligence office without a license, under penalty.	2. Mayor and aldermen may grant and revoke licenses for establishing and keeping intelligence offices.

1. No person shall hereafter establish or keep any intelligence office, for the purpose of obtaining places of employment for male or female family domestics, servants, or other laborers, except seamen, or for procuring or giving information concerning such places for or to such domestics, servants, or laborers, or for the purpose of procuring, for employers, domestics, servants, or other laborers, except seamen, or procuring and giving information concerning such domestics, servants or laborers, for or to employers, without a license as hereinafter provided, under a penalty of not less than ten dollars for each and every day such office shall be so kept, to be recovered, by complaint, in any court of competent jurisdiction. No person shall establish or keep an intelligence office, without a license, under penalty. 1848, 270, § 1.

2. The mayor and aldermen of any city, may grant licenses, for the term of one year, to suitable persons, for the foregoing purposes, and may revoke and annul the same whenever they may deem it expedient; and they shall be entitled to have and recover, for each and every license so granted, the sum of one dollar and no more. Mayor and aldermen may grant and revoke licenses. Ibid. § 2. Fee.

LAMPS.

STATUTE.	ORDINANCE.
Penalty for wilfully breaking or injuring lamps or lamp posts.	1. Mayor and aldermen empowered

1. To set up lamps, and make rules respecting the same.
2. Penalty for willfully breaking or injuring the same.

STATUTE.

Penalty for willfully breaking or injuring lamps or lamp posts. R. S. 126, § 43.

Every person who shall wilfully or maliciously extinguish any lamp, or break, destroy, or remove any lamp, or any lamp post, or any railing or posts, erected on any bridge, sidewalk, street, highway, court, or passage, shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding fifty dollars.

An Ordinance providing for lighting the streets.[1]

Be it ordained by the city council of the city of Salem, as follows:

Mayor and aldermen empowered to set up lamps and make rules respecting the same Feb. 13, 1851.

SECT. 1. The mayor and aldermen for the time being shall have authority to set up and affix such and so many lamps in the streets, and other places in the said city, for the purpose of lighting the same, as they may determine to be convenient and necessary. And the said mayor and aldermen are empowered to make all necessary contracts, rules, orders, and regulations respecting the said lamps, and the lighting and keeping the same in repair, and the regulation and preservation of the same as they may deem most for the benefit of the said city.

Penalty for willfully breaking or injuring the same.

SECT. 2. Whoever shall willfully, maliciously, or wantonly break, throw down, extinguish, or otherwise injure any of the lamps, or the posts, irons, gas fixtures, or other furniture to the same belonging, shall, upon conviction thereof, forfeit and pay a sum not less than four nor more than twenty dollars for each lamp so broken, and the like sum for each post, iron, or gas fixture, or other furniture so broken or damaged.[2]

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1 Passed February 13, 1851.

2 Section 3 amended section 16 of ordinance 12, which has since been repealed.

LEATHER.

STATUTES.

1. Deputy inspectors of sole leather to be appointed, and to give bond.
2. Inspector general to make annual returns.
3. Sole leather not to be sold until inspected, weighed, and sealed, except, &c.
4. Penalty for buying or selling sole leather, not inspected.
5. Inspector to inspect sole leather offered for inspection, except, &c.
6. Deputy inspector to inspect on application, &c.
7. Sole leather to be weighed and stamped.
8. Penalty for counterfeiting, &c., inspectors's marks.
9. Fees.
10. Penalty when weight varies five per cent.
11. Foregoing provisions extended to belt leather.
12. Manufacturers may stamp their articles. Such stamp a warranty.
13. Penalty for fraudulently stamping.
14. Measurers of upper leather to be appointed by mayor and aldermen.
15. To attend to measuring and sealing upper leather.
16. To procure measures and seals for the purpose, &c.
17. Penalty for counterfeiting, &c. measurers' marks.
18. Fees of measurer, and how paid.

Deputy inspectors of sole leather to be appointed, and to give bond. R. S. 28, § 121.

1. The inspector general of sole leather[1] shall appoint one or more deputy inspectors; and in the city of Boston, they shall be appointed upon the application of the mayor and aldermen, and in any town on application of the selectmen thereof; and the said inspector general shall be answerable for the doings of his deputies and shall take a bond, with sufficient sureties from each of them to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Inspector general to make annual returns. Ibid. § 122.

2. The inspector general of sole leather shall annually, in the month of January, make a return to the secretary of the Commonwealth; of the number and weight of all the sides of sole leather, inspected by him and his deputies during the year, ending on the first day of that month; and in such return he shall designate the quantity of each quality of leather so inspected, and the quantity of sole leather manufactured out of the state, so far as the same can be ascertained.

Sole leather not

3. No sole leather, made of the hides of neat cattle,

1 The inspector general of sole leather is appointed by the governor, with the advice and consent of the council, and holds his office for five years unless sooner removed. He is required to give bonds, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of three thousand dollars. See Rev. Stat. c. 28, §§ 1, 2, 3, 4, 120.

to be sold until inspected, weighed and sealed, except, &c. Ibid. § 123.

except such as shall have been previously inspected and sealed by one of the inspectors of this state, or by some inspector lawfully appointed for that purpose in some other of the United States, shall be sold to any person, for any purpose whatsoever, within any town in which there is an inspector, whether such sole leather is manufactured within this state or brought into the same, from any place whatsoever, until the same shall have been inspected, weighed and sealed by one of the inspectors of such town within this state.[1]

Penalty for buying or selling sole leather not inspected. Ibid. § 124.

4. If any person shall, within any town,[1] for which an inspector has been appointed, buy or sell any sole leather, which shall not have been inspected as aforesaid, he shall forfeit one dollar for each side of leather so bought or sold, to be recovered to the use of the town where the offence shall have been committed.

Inspector to inspect sole leather offered for inspection, except, &c. Ibid. § 125.

5. Every inspector, whenever requested, shall inspect, within the town for which he is appointed, all sole leather offered for his inspection; provided, however, that when there shall be less than thirty sides of leather to be inspected, and the distance shall be more than one mile from his place of residence, he may either require such sole leather to be brought to him for inspection, or may demand and shall be entitled to receive at the rate of ten cents for each mile, which he shall travel in such case, to be computed both in going from and returning to his place of residence.

Deputy inspector to inspect on application, &c. Ibid. § 126.

6. Each deputy inspector, who is appointed for any one town in a county, shall, upon application made to him, inspect sole leather in any other town of the same county, when there is no inspector for such other town; and he shall, also, upon the like application, inspect sole leather in any town of any adjoining county, when there is no inspector appointed in such adjoining county.

Sole leather, how weighed and stamped. Ibid. § 127.

7. Each inspector shall furnish himself with proper scales, weights and seals, for the purpose aforesaid, and shall weigh each side of sole leather which he shall

[1] In the construction of statutes, the word "town" may be construed to include all cities, &c. Rev. Stat. c. 2, § 6, clause 17.

inspect, and shall impress thereon his name, and the name of the place for which he is inspector, at full length, and also the weight thereof; and on all sole leather, which he shall find manufactured of good hides, in the best manner, he shall impress the word *best*, and on all manufactured of good hides, in a merchantable manner, the word *good*, and on all manufactured of damaged hides, in a merchantable manner, the word *damaged*, and all sole leather not belonging to any of the qualities aforesaid, the word *bad*.

Penalty for counterfeiting, &c., inspectors' marks. Ibid, § 128.

8. If any person shall counterfeit, alter or deface such marks on any side of sole leather, so inspected, he shall for each offence forfeit the sum of twenty-five dollars, to the use of the town where the offence shall have been committed.

Fees. Ibid, § 129.

9. The inspector general, and each deputy inspector shall be paid for inspecting, weighing, and sealing each side of sole leather, the sum of two cents, which shall be paid by the purchaser; and the inspector general may receive, from each of his deputies, two mills for each side of sole leather, which such deputy may inspect, weigh and seal as aforesaid.

Penalty when weight varies five per cent. Ibid § 130.

10. If any side of sole leather shall, when dried in a merchantable manner, so vary as to weigh five per cent. more or less than the weight marked thereon by the inspector who inspected the same, he shall be subject to the payment of the whole variation, at a fair valuation, to be recovered, in an action of the case[1], by the party injured thereby.

The foregoing provisions extended to belt leather. 1851, 217.

11. All the provisions of the twenty-eighth chapter of the Revised Statutes, concerning the inspection of sole leather; are hereby made applicable to belt leather, which shall be subject to inspection under the same conditions and incidents, and with the same penalties for the purchase and sale thereof, without inspection, as are enacted in the case of sole leather.

Manufacturers may stamp their articles. R. S. 28, § 131.

12. Each manufacturer of leather, or of boots, half boots, shoes, pumps, sandals, slippers or over-shoes, shall have the exclusive right of stamping said articles,

[1] See statute of 1852, c. 312, § 1.

by him manufactured, with the first letter of his christian name, and the whole of his surname at large, and the name of the town or place of his abode; and such stamping shall be considered as a warranty that the article stamped is merchantable, and made of good materials, and well manufactured; and none of the said articles shall be considered as merchantable, unless stamped as aforesaid.

Such a stamp a warranty.

Penalty for fraudulently stamping. Ibid. § 132.

13. Any person who shall fraudulently stamp, or aid and abet in fraudulently stamping, either of the articles enumerated in the preceding section, with the name or stamp of any other person, shall be punished either by fine, not exceeding one hundred dollars, or imprisonment, not exceeding six months, or both.

Measurers of upper leather to be appointed by mayor and aldermen. 1841, 119, § 1.

14. The mayor and aldermen of the several cities, and the selectmen of the several towns in this Commonwealth, shall, annually, in the month of April, when thereto requested by two or more citizens of said cities or towns, appoint one or more persons as measurers of upper leather, who shall be sworn to the faithful discharge of their duty.

To attend to measuring and selling upper leather. Ibid. § 2.

15. It shall be the duty of said measurers, appointed as aforesaid, to go, whenever requested, to any place within the town or city for which they are appointed measurers, to measure and seal any number of sides of upper leather, made of the hides of neat cattle, buffalo or other animal, usually heretofore sold by measure, except such as shall have been previously measured and sealed by one of the measurers of the same town or city, or of some other town or city in this state, or by some person lawfully appointed for that purpose, in some other of the United States.

To procure measures and seals for the purpose, &c. Ibid. § 3.

16. Each measurer shall furnish himself with proper racks or measures, for the purpose of ascertaining the number of square feet in each side of upper leather which he shall be requested to measure, and also suitable seals, and shall impress thereon his name, and the name of the place for which he is a measurer, at full length, and also the measure thereof in square feet, as low as a quarter.

17. If any person shall counterfeit, wilfully alter, or deface such marks on any side of upper leather so measured, he shall, for each offence, forfeit the sum of twenty-five dollars, one half to the use of the complainant, and one half to the use of the town where such offence shall have been committted. Penalty for counterfeiting, &c. measurers' marks. Ibid, § 4.

18. Every measurer shall be paid for measuring and sealing each side of upper leather, the sum of one cent, which shall be paid by the person who shall have requested him to measure and seal the same. Fees of measurer, and how paid. Ibid, § 5.

LIBRARY.

STATUTE.

1. Cities and towns authorized to establish a public library.
2. Cities and towns may appropriate.
3. Bequests and donations.

1. Any city or town of this Commonwealth is hereby authorised to establish and maintain a public library within the same, with or without branches, for the use of the inhabitants thereof, and to provide suitable rooms therefor, under such regulations for the government of such library as may, from time to time, be prescribed by the city council of such city, or the inhabitants of such town. Cities and towns authorized to establish a public library. 1851, 301, § 1.

2. Any city or town may appropriate for the foundation and commencement of such library, as aforesaid, a sum not exceeding one dollar for each of its ratable polls, in the year next preceding that in which such appropriation shall be made; and may also appropriate annually, for the maintenance and increase of such library, a sum not exceeding twenty-five cents for each of its ratable polls, in the year next pre- Cities and towns may appropriate. Ibid, § 2.

ceeding that in which such appropriation shall be made.

Bequests and donations. Ibid, § 3.

3. Any city or town may receive in its corporate capacity, and hold and manage any devise, bequest or donation, for the establishment, increase, or maintenance of a public library within the same.

LUMBER.

STATUTE.

Ordinances may be established respecting survey of lumber.

ORDINANCE.

1. Surveyor general of lumber and timber to be appointed. Shall give bond.
2. May appoint deputy surveyors. Their duties.
3. There shall be four sorts of pine boards and planks.
4. Two sorts of pine joists.
5. Two sorts of spruce hemlock, and juniper boards, plank and joists.
6. Two sorts of ash, maple, and other hard wood, &c.
7. Two sorts of timber, except mahogany and cedar.
8. One sort of mahogany and cedar. Manner of surveying the same.
9. Hewn timber. Sawed timber. Contents, how to be marked. Deduction for splits. Lumber to be sold according to these marks. How surveys shall be made.
10. Fees; to be paid by the purchaser.
11. What fees to be paid to surveyor general.
12. Surveyor general to make annual returns.
13. Penalty for conniving at fraud. For neglect of duty.
14. Penalty for selling or purchasing lumber not surveyed, except, &c.
15. Ordinance No. 35 repealed.

STATUTE.

City government may establish ordinances respecting survey of lumber. 1840, 44. R. S. 28, § 155. 9 Greenl. 54.

In the city of Salem, the city government may establish any ordinances and regulations, with suitable penalties, respecting the appointment of surveyors and the survey and admeasurement of boards, plank, timber, and lumber of every description, brought by water into said city for sale, as they may from time to time determine to be expedient.

An Ordinance authorizing the appointment, and prescribing the duties of surveyors of lumber and timber, brought into the city of Salem, by water, for sale.[1]

Be it ordained by the city council of the city of Salem, as follows:

Surveyor general of lumber and timber to be appointed. Aug. 8, 1842.

SECT. 1. There shall be annually appointed in the month of April or May, by the city council, by ballot, in convention, a surveyor general of lumber and timber, for the city of Salem, who shall be well skilled in the surveying and admeasurement of lumber and timber, who shall hold his office for one year, and until a successor be chosen, unless sooner removed. And before he shall enter on the duties of his office, he shall give bond, with sufficient sureties, to the city treasurer, in the sum of three hundred dollars, for the faithful discharge of his duty, and he shall be sworn faithfully to perform the same.

Shall give bond.

May appoint deputy surveyors.

SECT. 2. The said surveyor general shall have power to appoint such a number of deputy surveyors of lumber, and timber in general, as he may judge sufficient, not, however, less than four; and the said surveyor general shall appoint one or more deputy surveyors, whose sole and especial duty it shall be to measure oak, and other hard wood commonly used in ship building. And he shall likewise appoint one or more deputy surveyors, whose sole and special duty it shall be to survey mahogany, ash, cedar, and other ornamental wood and lumber; and said surveyor general shall be answerable for his deputies, and shall take bonds from them respectively for the faithful discharge of their duties, and they shall be sworn faithfully to perform the same, and they shall be removable at the pleasure of said surveyor general. And it shall be the duty of said surveyor general and his deputies to survey and admeasure, on landing, all lumber and timber, brought

Their duties.

[1] Passed August 8, 1842.

into the city of Salem by water, for sale, according to this ordinance.

There shall be four sorts of pine boards and planks.

SECT. 3. In the survey of pine boards and planks, there shall be four sorts. The first sort shall be denominated number one, and shall include boards not less than one inch thick, straight-grained, and free from rot, sap, knots and shakes. The second sort shall be denominated number two, and shall include boards not less than one inch thick, free from rot and large knots, and suitable for planing; provided that such boards as are clear, but are deficient in thickness as aforesaid, shall be received as number two by making such allowance for the deficiency in thickness as may be required to make them equal to one inch thick. The third sort shall be denominated number three, and shall include boards not less than seven-eighths of an inch thick, nearly free from rot, and nearly square edged, and suitable for covering buildings. The fourth sort shall be denominated number four, and shall include all boards and plank of every description, not being within the other three denominations.

Two sorts of pine joists.

SECT. 4. In the survey of pine joists, there shall be two sorts. The first sort shall be denominated number one, and shall include all joists that are sound and square-edged. The second sort shall be denominated number two, and include all other descriptions.

Two sorts of spruce, hemlock, and juniper boards, plank and joists.

SECT. 5. In the survey of spruce, hemlock, and juniper boards, plank and joists, there shall be two sorts. The first sort shall be denominated number one, and shall include all boards, plank and joists that are sound and square-edged. The second sort shall be denominated number two, and shall include all other descriptions.

Two sorts of ash, maple, and other hard wood, &c.

SECT. 6. In the survey of ash, maple, and other hard wood, and ornamental boards, plank, and joists, there shall be two sorts. The first sort shall be denominated number one, and shall include all boards, plank,

and joists, that are sound and free from shakes. The second sort shall be denominated number two, and shall include all other descriptions.

Two sorts of timber, except mahogany and cedar.

SECT. 7. In the survey of timber, except mahogany and cedar, there shall be two sorts. The first sort shall be denominated number one, and shall include all timber that is sound, straight, and square-edged, and in lengths or joints not less than sixteen feet in length, due allowance being made for sap. The second sort shall be denominated number two, and shall include timber of all other denominations.

One sort of mahogany and cedar. Manner of surveying the same.

SECT. 8. In the survey of mahogany and cedar, there shall be but one sort. And it shall be the duty of the surveyor general of lumber and timber, and his deputy, specially appointed to survey mahogany and cedar, to number all the mahogany and cedar logs or sticks, contained in each lot or cargo, and in regular numerical order, and to mark the number of each log or stick upon the same, in legible characters. And the said surveyor shall, to the best of his ability, ascertain the whole number of feet, board measure, in each and every log or stick, and what quantity thereof is merchantable, and what is refuse. And said surveyor shall thereupon issue a certificate, or survey bill, of said survey, in which shall be stated the number of each log or stick, and the whole number of feet contained in the same, and specifying the number of feet which are merchantable and refuse.

Hewn timber.

SECT. 9. All hewn timber six inches square and upwards, except timber called scab, shall be surveyed and sold as ton timber, at and after the rate of forty cubic feet to a ton.

Sawed timber.

All sawed timber shall be surveyed and sold by board measure.

Contents, how to be marked.

In the survey of boards, planks, joists and sawed timber, the contents of the same shall be truly marked thereon, in plain and legible numbers, and all other marks shall be erased. And on the second and third sorts of boards and planks, the numbers two and three shall be in like manner marked

Deduction for splits.

thereon respectively. Allowance and deduction shall be made for splits, not exceeding in any case one half the extent of the splits. All boards, planks, joists, and

Lumber to be sold according to these marks.

sawed timber, shall be received and sold according to the contents thereof as fixed and marked under the

How surveys shall be made.

aforesaid regulations; but all surveys shall be made under the direction of the surveyor general, by his deputies; and application shall be made, by all persons requiring surveys, to the surveyor general, who shall direct his deputies to perform their respective duties in rotation.

Fees; to be paid by the purchaser.

SECT. 10. The fees for surveying and marking according to the foregoing provisions of this ordinance, shall be paid by the purchaser, and be as follows, viz: for pine, spruce, hemlock, and juniper boards, planks, joists, and sawed timber, twenty-four cents for every thousand feet, board measure; for pine, spruce, hemlock and juniper timber, twelve cents for every ton; for oak timber, twenty-four cents for every ton; for ash, maple, and other hard wood, and ornamental boards, plank and joists, forty cents for every thousand feet, board measure; and for Cuba, St. Domingo and other branch hard mahogany, one dollar for every thousand feet, board measure; and for mahogany from the bay of Honduras, and for cedar, seventy-five cents for every thousand feet, board measure.

What fees to be paid to surveyor general.

SECT. 11. Of the fees received by the deputy surveyors, there shall be paid to the surveyor general to his own use, as follows, viz: four cents for every thousand feet of pine, spruce, hemlock and juniper boards, planks, joists and sawed timber; four cents for every ton of oak timber; three cents for every ton of pine or other timber; ten cents for every thousand feet, board measure, of ash and ornamental lumber; and ten cents for every hundred cents received by such deputies for the surveying of mahogany and cedar.

Surveyor general

SECT. 12. It shall be the duty of the surveyor

general annually, in the month of March,[1] to make a true return to the mayor and aldermen, of all lumber surveyed by his deputies, specifying the various kinds and qualities, and by whom surveyed, and the amount of all fees received by him and his deputies, pursuant to this ordinance. to make annual returns.

SECT. 13. If the said surveyor general or either of his deputies, shall be guilty of, or connive at any fraud or deceit, in surveying, marking or numbering, the contents of any boards, plank, joists or timber, he shall forfeit and pay for every offence, a sum not less than ten dollars, nor more than twenty dollars. And if the surveyor general or his deputies, on due notice and request, shall unreasonably neglect or refuse to perform the duties enjoined by this ordinance, he shall forfeit and pay for every such offence, a sum not less than ten dollars nor more than twenty dollars; one half of the aforesaid forfeitures to be recovered by him or them who shall sue for the same to his or their use; and the other half to the use of the city of Salem, before any court of competent jurisdiction. Penalty for conniving at fraud. For neglect of duty.

SECT. 14. It shall not be lawful for any person within the city of Salem to sell or to purchase any boards, plank, joists or timber, brought by water into said city unless they shall be surveyed, marked, and numbered, on landing conformably to the provisions of this ordinance, except only such as are, *bona fide*, intended to be exported, and shall be actually shipped for the purpose of exportation within one year after the same shall have been sold and delivered to the person first purchasing or receiving the same in said city. And every person who may sell or purchase any boards, plank, joists or timber, not surveyed, marked or numbered as herein provided, subject to the foregoing exceptions, shall forfeit and pay for all boards, plank, Penalty for selling or purchasing lumber not surveyed, except, &c.

[1] See Finance [13] p. 61, *ante*.

joists and timber so sold and purchased, double the amount of fees due for the services herein prescribed for the surveyor general and his deputies, to be sued for and recovered in any court of competent jurisdiction.

Ordinance No. 35 repealed.

SECT. 15. That an ordinance passed May 11, 1840, authorizing the appointment and prescribing the duties of surveyors of lumber and timber brought into the city of Salem by water for sale, be, and the same is hereby repealed, except so far as may be necessary for the recovery of any penalty already incurred for any breach thereof, and provided that all officers appointed under said ordinance shall continue to hold their respective offices until others are appointed in their places.

MARBLE.

STATUTE.

Mayor and aldermen may establish regulations respecting survey of marble.

Mayor and aldermen may establish regulations respecting survey of marble. 1851, 160.

The mayor and aldermen of any city, or the selectmen of any town in this Commonwealth, may establish such ordinances or regulations, with suitable penalties, respecting the appointment of a surveyor, and the survey and admeasurement of marble of every description, either foreign or American, that shall be imported or brought into such city or town for sale, as they may from time to time deem expedient.

MARKET.

STATUTE.

1. Selectmen authorized to make market regulations. Regulations to be published. Penalties. Fines recovered to be paid to overseers of poor, &c.

2 Averment on complaint.

ORDINANCES.

1. Duties of clerk of the market.
2. Limits of market.
3. Market-hours.
4. Stands for sale of provisions, &c.
5. Prohibition of stands for sale of provisions, &c.
6. Fraudulent dealings in the market
7. Stalls shall be leased.
8. Offal to be removed.
9. Offal and filth not to be deposited in the streets, &c. adjoining market house. Regulations respecting diseased provisions, &c. Penalty.
10. Stalls shall revert to city.
[11.] Cow and swine market.
[12.] Cows and swine not to be sold elsewhere.
[13.] Penalty.

STATUTES.

1. The selectmen of the town[1] of Salem, for the time being, be and hereby are authorized to make any rules and orders not repugnant to the constitution or laws of this Commonwealth, for the due regulation and government of the market house of said town, and of the market carts, wagons, sleds, sleighs and other vehicles or carriages, used for marketing in said town, and of the market men who frequents said town for the purpose of buying and selling provisions and other commodities in open market. And the said selectmen be and hereby are authorized to appoint, from time to time, suitable places in the streets, squares and other public places in said town, in which all wagons, carts, sleds, sleighs or other vehicles or carriages, containing provisions, wood, hay, barrels or other commodities for sale in open market, shall stand for the purpose of such sale; which rules and orders, when approved by the inhabitants of said town, in legal town meeting assembled, shall be and become by-laws of said town, and shall be binding upon all persons whomsoever. And such rules and orders, when so approved, shall be published in all the newspapers printed in said town. And if any person or persons shall, after the same shall have been published as aforesaid, offend against any of such rules or orders, he,

Selectmen authorized to make market regulations. 1816, 163, § 1.

Regulations to be published.

Penalties.

[1] See note 2, page 27, *ante*.

she or they shall, for each offence, forfeit and pay a sum not exceeding ten dollars, to be recovered on complaint of either of the selectmen of said town, or of any person or persons, who shall be appointed by them as inspector or inspectors of the police of said town, before any justice of the peace for the county of Essex,[1] resident in said town or elsewhere in said county. And all fines and forfeitures recovered on any such complaint, shall be paid to the overseers of the poor of said town, to be distributed among such poor, according to the discretion of the said overseers.

Fines recovered to be paid to overseers of the poor, &c.

Averment on complaints. Ibid, § 2.

2. In every such complaint under this act, as well as in all other complaints for breaches of any of the by-laws of said town, it shall be sufficient summarily to state the offence, and to conclude with an averment that the same is against the by-laws of the said town, without reciting the by-law or by-laws on which such complaint shall have been founded, or the time or manner in which the same was or were passed or approved.[2]

An Ordinance prescribing rules and regulations for the government of the market within the city of Salem.[3]

Duties of clerk of the market. Aug. 17, 1853.

SECT. 1. The clerk[4] of the market shall, under the control of the mayor and aldermen, have the care and superintendence of the market, and it shall be his duty to preserve order in the market, and to execute and carry into effect all the regulations, orders and ordinances which may be duly made and established from time to time by the city council or mayor and aldermen for the due regulation of the same; and it shall be his duty to enter complaints for any violation of said regulations, orders or ordinances.

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1 See note 1, page 64, *ante*.

2 See statute of 1846, c. 62; also, Ordinances & By-laws; § 4, *post*.

3 Passed August 17, 1853. 4 See Marshal, p. 144 § 4.

Limits of market.

SECT. 2. The limits of the market shall be the lower floor of the market house, with the cellars connected with the stalls, under the same, and the streets on each side of said market house, south of the centre doors on each side of the same, the area south of said house, and Front street on both sides from Washington to Central street: *provided, however*, that the clerk of the market, under the direction of the mayor and aldermen, may extend these limits, if found necessary, on the three days preceding the annual thanksgiving, and christmas.

Market hours.

SECT. 3. The market house shall be kept open for such hours on each day as the mayor and aldermen may from time to time order and direct; provided, that it shall at no time be closed sooner than sunset.

Stands for sale of provisions, &c.

SECT. 4. The clerk of the market, under the direction of the mayor and aldermen, shall have the control of all carts, wagons and other carriages within the limits of the market, and may assign stands in the streets within the limits of the market for the sale of provisions and other articles; and no person shall occupy any other stand than the one so assigned, or keep any cart, wagon, sleigh or other vehicle or carriage, horse or other beast, within the limits of said market, for any longer space of time, or shall range or locate them in any other manner or form, than such as may be directed by the clerk of the market, under the penalty of not less than one dollar, nor more than five dollars, for every hour that shall elapse between the time the owner or person having the care of such vehicle or beast, shall be notified to remove the same by the clerk of the market, and the time of the removal of the same.

Prohibition of stands for sale of provisions, &c.

SECT. 5. No person, unless duly authorized by the mayor and aldermen, shall stand in any of the streets, lanes, alleys, squares, or public places of the city, with carts or other carriages, horses or other beasts, having meat, poultry, fish, vegetables, fruit, or other articles of provisions for sale, except those designated by this ordi-

nance as the limits of the market, nor be allowed to place any stall, bench, or block therein, on which to expose such articles for sale, under a penalty of not less than one, nor more than five dollars, for each and every offence, to be recovered on complaint before the police court of the city of Salem; *provided*, however, that the foregoing section shall not be so constructed as to prohibit carts and other carriages passing from place to place for the sale of meat and other articles.

Penalty.

Proviso.

Fraudulent dealings in the market.

SECT. 6. If any person shall, within the limits of the market, sell or offer for sale any article which shall be deficient in the weight or measure for which he sells or offers to sell the same; or shall practice any fraudulent dealings in the market, and be convicted thereof, or of either of the offences enumerated in this ordinance, he shall not be permitted to use or hire a stall, or have or occupy any stand within the limits of the market for the purpose of offering for sale any articles usually sold within the same, for the term of one year from and after such conviction, unless specially permitted by the mayor and aldermen so to do, after such conviction or their knowledge of the same.

Stalls shall be leased.

SECT. 7. The several stalls in the market shall be leased to the respective occupants by written leases, the conditions of which shall be prescribed by the mayor and aldermen, and the rent thereof shall be paid to the clerk of the market, or to such person as the mayor and aldermen shall appoint, and at such times as the mayor and aldermen shall determine; and such lessees shall not underlet the same, or any part thereof, or permit the same, or any part thereof, to be occupied by any other person, without the assent of the mayor and aldermen, under the penalty of forfeiting their respective stalls or leases.

Offal to be removed.

SECT. 8. The said lessees shall not throw or permit to be thrown, or to remain within the precincts of their respective stalls, any offal, animal substance, scrapings,

or any kind of dirt, filth or useless matter, but shall forthwith remove the same, or cause the same to be deposited in some tight vessel, to be approved by the clerk of the market, and to be removed by said lessees as said clerk shall direct.

Offal and filth not to be deposited in the street, &c., adjoining market house.

SECT. 9. No person shall throw, sweep, or deposit any offal, animal or vegetable substance, scrapings or sweepings, damaged salt or pickle, or foul water into the passage ways, or on the side-walks, or into the streets adjoining the market house, at any time during the day or night; nor shall any persons within the limits of the market, sell or offer or expose for sale, any meat, fish, bread, vegetables, or other article of provisions, which, in the opinion of the clerk of the market, shall be deceased, tainted, corrupted or unwholesome; but such person shall, when directed by said clerk, forthwith remove all such meat, fish, bread, vegetables or other article, from said limits to such place as said clerk shall order; and if such person shall refuse or neglect to comply with such direction, said clerk shall forthwith remove the same, or cause the same to be removed, to such suitable place as aforesaid, at the expense of such person; and if, in the judgment of said clerk, it shall be necessary for the public health, it shall be his duty to destroy the same; and if any person shall hinder, obstruct, or molest the said clerk in the premises, or shall violate any provision of this section, he shall be liable to a penalty of not less than one dollar, nor more than twenty dollars for each offence.

Regulations respecting diseased provisions, &c.

Penalty.

Stalls shall revert to the city.

SECT. 10. When the lessee of any stall or occupant of any cellar in the market house, shall from any cause vacate the same, or shall receive notice from the mayor and aldermen to vacate the same, or shall refuse or neglect to pay his rent, for the space of twenty-four hours, or shall neglect or refuse to comply with any regulations established for the good order and cleanliness of the market house, its entries, passage ways,

side-walks, and the streets adjoining said market house, the stall or stalls of such lessee shall thereupon revert to the city, and be at the disposal of the mayor and aldermen.

An Ordinance establishing a market for the sale of cows and swine.[1]

Be it ordained by the city council of the city of Salem, as follows:

Cow and swine market. Aug. 22, 1853.

[11.] SECT. 1. The market for the sale of cows and swine shall be on the city land, opposite the burial ground, on Bridge street, and on said street between St. Peter and Howard streets.

Cows and swine not to be sold elsewhere.

[12] SECT. 2. No cow or swine driven into the city shall be sold or offered for sale in any street, lane, or public place in the city; but they shall be driven directly to the market place provided for them, where they may be exposed for sale under such regulations as the mayor and aldermen may adopt.

[13.] SECT. 3. Any person who shall violate any of the provisions of this ordinance, or any of the regulations which may be prescribed by the mayor and aldermen in conformity thereto, shall be liable to a penalty of not less than one dollar or more than five dollars.

Penalty.

MARSHAL.

ORDINANCES.

1. Appointment of marshal and assistant marshals.
2. Marshal shall give bond.
3. Marshal to have general supervision of constables, &c. To re-

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[1] Passed August 22, 1853.

port violation of duty by other police officers. To observe nuisances, &c. in streets. To receive complaints for breach of laws or ordinances. To enforce ordinances of city and orders of mayor and aldermen. To prosecute and attend at trials. To keep record of prosecutions.
4. To be clerk of market.
5. To let cellars, &c. of market-house. Fines, &c. to be paid to treasurer.
6. Assistant marshals shall pay monies received to marshal. Marshal shall keep an account of all monies received.
7. Duties of assistant marshals.
8. Salaries.
9. Sunday patrol.
10. Repealing clause.

An Ordinance authorizing the appointment and prescribing the duties of city marshal and assistants.[1]

Be it ordained by the city council of the city of Salem, as follows:

Appointment of marshal and assistant marshals. April 20, 1852.

SECT. 1. That the mayor and aldermen shall annually, as soon after the organization of the city government as may be convenient, and whenever any vacancy occurs, appoint a city marshal and four assistant marshals; said marshal and assistants shall also be appointed police officers, and their whole time shall be at the disposal of the mayor and aldermen.

Marshal shall give bond.

SECT. 2. The city marshal, before entering upon the duties of his office, shall give bond in the sum of one thousand dollars, with sufficient sureties, to be approved by the mayor and aldermen, for the faithful performance of the duties of said office, and shall also be sworn to their faithful performance.

Marshal to have general supervision of all constables.

SECT. 3. The city marshal shall have the general charge and supervision of all the constables, police officers and watchmen, and shall have the precedence and control of the same, whenever engaged in the same service, and whenever directed by the mayor and aldermen; and he shall report forthwith to the mayor and aldermen any violation of duty on the part of either of said officers. It shall be the duty of the city marshal from

To report violation of duty by other police officers.

To observe nuisances, &c. in streets.

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[1] Passed April 20, 1852.

time to time to pass through the streets and lanes of the city to observe all nuisances, obstructions, and impediments therein, to the end that the same may be removed according to law. It shall also be his duty to receive all complaints against any person or persons for any breach of the laws in relation to this city, or of the ordinances and by-laws of the city; and for that purpose he shall attend daily, at some stated time at some office to be designated by the mayor. It shall also be his duty to enforce and carry into effect, to the utmost of his power, all and every of the city ordinances and by-laws. He shall obey and execute all the orders of the mayor and aldermen in any matter in which the city shall be in anywise concerned. He shall be vigilant to detect the breach of any by-law or city ordinance, and shall prosecute all offenders as soon as may be, and attend at the trial in behalf the city. He shall keep a record of all prosecutions instituted by him or his assistants before the police court, which record shall at all times be subject to the inspection of the mayor and aldermen.

To receive complaints for breach of laws or ordinances.

To enforce ordinances of city, and orders of mayor and aldermen.

To prosecute and attend at trials.

To keep record of prosecutions.

To be clerk of market.

SECT. 4. The city marshal shall also perform the duties of clerk of the market, and shall have the care and superintendence of the market and market place, under the direction of the mayor and aldermen.

To let cellars, &c. of market house.

SECT. 5. The city marshal shall, with the approval of the mayor and aldermen, let or lease the cellars, stalls, and other parts of the market house or buildings, shall punctually collect the rents of the same, and pay them over to the city treasurer, when collected. He shall also collect and pay over to the treasurer all fines and penalties incurred for violations of the by-laws and ordinances of the city.

Fines, &c., to be paid to treasurer.

Assistant marshals shall pay monies received to marshal.

SECT. 6. The assistant marshals, upon receiving any fees as witnesses in any criminal case, and fees for service of any criminal process, and any monies for services in behalf of the city, shall forthwith pay over

the same to the marshal. The marshal shall keep an account of all moneys thus received from his assistants, and shall pay over the same when received, together with his own fees received as witness in any criminal case, or for service of any criminal process, and all moneys received for services in behalf of the city to the city treasurer. Marshal shall keep an account of all monies received.

SECT. 7. The assistant marshals shall, under direction of the marshal, and of the mayor and board of aldermen, aid in the performance of any and all such duties as are prescribed in this ordinance, for the city marshal, and shall act as a day and evening police. Duties of assistant marshals.

SECT. 8. The marshal shall be paid the sum of seven hundred dollars per annum in full for all his services. The assistant marshals shall be paid the sum of five hundred dollars each per annum in full for all their services respectively, said salaries to be paid as often as in quarterly payments. Salaries.

SECT. 9. The mayor and aldermen may appoint such number of police for an evening and Sunday patrol as they may deem necessary, who shall be under the direction of the marshal and his assistants. Sunday patrol.

SECT. 10. The ordinance authorizing the appointment and prescribing the duties of city marshal, numbered four (two) and passed May 13th, 1836, and all parts of any other inconsistent with this ordinance, are hereby repealed. Repealing clause.

MESSENGER.

ORDINANCE.

1. Messenger appointed.
2. Messenger to notify and attend all meetings of city council, &c. at city hall. Further duties.
3. To have the care of city hall and ward rooms.
4. Compensation.

An Ordinance to establish the office of messenger to the city council.[1]

Be it ordained by the city council of the city of Salem, as follows:

Messenger appointed. June 27, 1853.

SECT. 1. There shall annually be appointed, by the mayor and president of the common council, a messenger to the city council, who shall hold his office for one year, and until another is appointed in his place.

Messenger to notify and attend all meetings of city council, &c., at city hall. Further duties.

SECT. 2. The said officer shall notify and attend all meetings of the mayor and aldermen, and of the common council, and of all committees and boards when in session, at the city hall, and in general shall perform all services required by the mayor, by either branch of the city council, or by such committees or boards.

To have the care of city hall and ward rooms.

SECT. 3. The said officer shall have the care of the city hall and of the various apartments thereof, and shall also prepare the rooms, selected for ward meetings, and have the same put in good order after said meetings are adjourned.

Compensation.

SECT. 4. The said officer shall receive such compensation, as the city council may, from time to time, by ordinance determine.

MUSTER FIELDS.

STATUTE.

Power of mayor and aldermen with regard to booths, &c. used for unlawful purposes on muster fields, cattle-show grounds, &c.

Power of mayor and aldermen with regard to

The mayor and aldermen of any city, upon complaint made to them, under oath, that the complainant has

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[1] Passed June 27, 1853.

booths, &c., used for unlawful purposes on muster fields cattle show grounds, &c. 1850, 291. 1851, 91.

reason to believe, and does believe, that any booth, shed, or other temporary erection, situated within one mile of any muster-field, cattle-show ground, or other place of public gathering, is used and occupied for the sale of spirituous or fermented liquors, or for the purpose of gaming for money, or other property, may, if they consider the complaint well founded, order the owner or occupant thereof to vacate and close the same immediately: and if the owner or occupant shall refuse or neglect so to do, the said selectmen may, forthwith, abate such booth, shed or other temporary erection, as a nuisance, and pull down, or otherwise destroy the same, in any manner they may choose, or through the agency of any force, civil or military, which they may see fit to employ.

ORDINANCES AND BY-LAWS.[1]

STATUTES, &c.

1. By-laws may be annulled by general court.
2. Power of city council of Salem. to make by-laws. Provisoes.
3. City councils of all cities shall have power to make by-laws respecting peace, good order, and internal police.
4. In complaints, &c., upon by-

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1 All by-laws must be reasonable or they are void. Whether a by-law be reasonable or not is for the court to determine, and evidence to the jury on that question is inadmissible. *Commonwealth v. Worcester*, (3 Pick. 462.) The mayor and aldermen of a city have no power to suspend a by-law of the city, nor to authorize a violation or it. *Ibid.* By the Revised Statutes, c. 15, § 15, it is provided that all by-laws made by any town shall be published in one or more newspapers printed in the county where such town is situated. The by-laws made by any town are binding upon all persons coming within the limits thereof, as well as upon the inhabitants of such town. *Ibid*, § 14. See also *Vandine's case*, (6 Pick. 187.) A by-law may be good in part, and void for the rest. *Ro-*

laws, no part of such by-law shall be required to be recited.
5. Police court shall have cognizance of offences against the by-laws of the city, except, &c.

ORDINANCES.
1. Enacting style of city ordinances.
2. Ordinances to be recorded.
3. Ordinances to be published. This provision to be directory merely.

STATUTES, &c.

By-laws may be annulled by general court. Const. of Mass. Amend. Art. 2.

1. It is provided, by the constitution of the Commonwealth, that all by-laws, by municipal or city governments, erected and constituted by the general court, shall be subject, at all times, to be annulled by the general court.

Power of city council to make by-laws. City charter, § 20.

2. The city charter, § 20, provides, that the city council shall have power to make all such salutary and needful by-laws, as towns by the laws of this Commonwealth have power to make and establish, and to annex penalties, not exceeding twenty dollars, for the breach thereof, which by-laws shall take effect and be in force from and after the times therein respectively limited, without the sanction of any court, or other authority whatever; *provided, however*, that all laws and regulations now in force in said town of Salem, shall, notwithstanding this act, be and remain in force, until they shall expire by their own limitation, or be revised or repealed by the city council, and all fines and forfeitures for the breach of any by-law, shall be paid into the city treasury.

Provisoes.

City councils of cities shall have power to make by-laws respecting peace, good

3. The act of 1847, c. 262, provides that the city council of any city shall have power and authority to make all by-laws, not inconsistent with the laws of the

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gers v. Jones, (1 Wend.) N. Y.) 260.) See *Austin v. Murray*, (16 Pick. 121.) *Commonwealth v. Dow*, (10 Metc. 382.) By-laws cannot be made to operate retrospectively, *Howard v. Savannah*. (Charlt. (Geo.) Rep. 173.) A by-law of a town or corporation, imposing penalties for particular offences, seems not to be void merely because a general law of the state imposes penalties for the same offences. *Rogers v. Jones*, (1 Wend. (N. Y.) Rep. 237.) See 1 Bay, 382.

Commonwealth, that may be necessary to preserve the peace, good order, and internal police of the city, and may annex suitable penalties, not exceeding twenty dollars for any one breach thereof, to be recovered by complaint before any police court in such city, or any justice of the peace in a city where no police court is established: *provided*, that nothing herein contained shall be construed to affect the provisions of an act entitled "An act to prevent obstructions in the streets of cities, and to regulate hackney coaches and other vehicles," passed in the year eighteen hundred and forty-seven.[1]

order, and internal police. 1847. 262. 1 Cush. 493. 3 Pick. 462. 1 Metc. 130, 135.

4. In any complaint, prosecution, or other process, founded upon the by-laws of any town or city, no part of such by-law shall be required to be recited or set forth, but the offence may be described therein with the degree of certainty required in prosecutions upon public statutes; *provided*, that nothing herein contained shall affect the degree or kind of evidence required at the trial of the existence of such by-law.

In complaints, &c., upon by-laws, no part of such by-law shall be required to be recited. 1846, 62. 3 Pick. 462. 5 Pick. 44.

5. The police court of the city of Salem has cognizance of all offences against the by-laws and regulations which may be established by the city council of the city of Salem, and may, on conviction thereof, award such sentence as to law and justice may appertain. And any person aggrieved by such sentence, may appeal therefrom to the court of common pleas for the county of Essex, under the restrictions and conditions provided by law in other cases of appeal from said court.

Police court shall have cognizance of offences against the by-laws of the city. City charter, § 21.

An Ordinance in relation to the ordinances of the city.

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. All by-laws of the city shall be denominat-

Enacting style of

[1] See the statute referred to, 1847, c. 224, on p. 43, *ante*.
[2] Passed June 27, 1853.

city ordinances. June 27, 1853.

ed ordinances, and the enacting style shall be, "*Be it ordained by the city council of the city of Salem, as follows.*"

Ordinances to be recorded.

SECT. 2. All ordinances of the city shall be recorded at length by the city clerk, in a fair and legible hand, in the order in which they shall pass to be ordained, in a book to be kept for that purpose, made of strong linen paper, with proper margins and index, to be lettered "Record of Ordinances of the City of Salem." Said book of records shall be preserved in the office of the city clerk.

Ordinances to be published.

SECT. 3. All ordinances of the city, imposing penalties, shall be published and promulgated, by inserting the same, three times successively, in such newspaper or newspapers, printed in the city, as the mayor and aldermen shall from time to time designate; but this, and the second section, are directory merely, and a failure to comply with the same shall not affect the validity of any ordinance.

This provision to be directory merely.

OVERSEERS OF THE POOR.[1]

ORDINANCE.

An Ordinance providing for the election of overseers of the poor.[2]

Be it ordained by the city council of the city of Salem, as follows:

Overseers of the poor April 11, 1842.

SECT. 1. The overseers of the poor of said city, shall

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1 For general statutes governing overseers of the poor, see R. S. c. 16, 45, 46, 143; stat. 1837, c. 54, 194, 217; 1841, c. 116; 1844, c. 146; 1846, c. 88; 1848, c. 247, 291; 1849, c. 66, 74, 151; 1852, c. 132. See Paupers, *post*.

2 Passed April 11, 1842.

consist of the mayor, aldermen, and one member of the common council from each ward of the city.

SECT. 2. The city council shall, as soon after the passage of this ordinance as may be convenient, elect by ballot in convention, one member of the common council from each ward of the city, to be members of the board of overseers of the poor, as is above provided.

PAUPERS.

STATUTES.

1. Towns shall support their poor.
2. Powers and duties of overseers of the poor.
3. Further powers of overseers.
4. Towns may provide alms-houses.
5. Certain kindred of poor persons, if able, shall support them.
6. Court of common pleas may assess such kindred.
7. Court of common pleas may also assess for future expenses.
8. Costs in such proceedings, how taxed.
9. The court may order with whom of such kindred the pauper shall live.
10. Proceedings on complaints made to court of common pleas.
11. Other kindred than those named in the complaint may be summoned.
12. Court may make new orders from time to time.
13. Overseers, to provide for immediate relief of strangers, &c., and their remedy
14. When a recovery shall establish the fact of settlement.
15. Towns removing a pauper within thirty days, to pay only one dollar a week.
16. Overseers shall support, and in case of decease, bury, indigent strangers. Remedy therefor.
17. Foreign paupers may be conveyed from the state to the place where they belong.
18. Towns liable to their own inhabitants, after notice, &c.
19. Paupers may be removed to places of settlement.
20. Process in cases of removals. If a removal is not made or objected to by the town notified, then, &c.
21. Effect of notifications, &c., to towns sent by mail.
22. What minor children may be bound out by overseers.
23. Penalty for leaving paupers in towns to which they do not belong, with intent, &c.
24. Penalty on shipmasters for landing convicts, &c., from other states.
25. Overseers, or persons by them authorized, may prosecute, &c.
26. Overseers of the poor empow-

ered to take the effects of deceased paupers, and apply them to reimburse expenses.
27. Overseers of poor to make returns respecting paupers.
28. Penalty for not making return.
29. Overseers and directors to make returns of children under 14 supported at public charge.
30. Blank forms to be provided.
31. Who shall not be considered state paupers.
32. Rates of charge for state paupers.
33. Particulars of account for state paupers, and how certified.
34. Accounts to be rendered yearly, on or before the third Wednesday of November.
35. Certificate that whole amount has been expended.
36. Accounts for support of state paupers sick with infectious disease, to what time to be made up, and when rendered.
37. Accounts for support of lunatic paupers.
38. Secretary shall transmit claims to auditor of accounts.
39. Terms on which accounts not duly rendered may be allowed.
40. Accounts for support of state lunatic paupers to be accompanied by proof of suitable support.
41. When state alms-houses are completed, governor to issue proclamation. Cities and towns may send state paupers to such institutions.
42. Cities and towns to receive nothing from Commonwealth for expenses afterwards incurred.
43. Punishment of inmates leaving without consent and found begging.

Towns shall support their poor. R. S. 46, § 1.

1. Every town[1] shall relieve and support all poor and indigent persons, lawfully settled therein,[2] whenever they shall stand in need thereof, and may raise moneys therefor, and for their employment, in the same way, that moneys for other town charges are raised.

Powers and duties of overseers of the poor. Ibid, § 2.

2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons, so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported and employed, at the charge of such town, either in the workhouse, or almshouse, provided by the town, or in such other manner as the town shall direct, or otherwise, at the discretion of said overseers.

Further powers of overseers. Ibid, § 3.

3. The overseers of the poor shall have the same

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1 In the construction of statutes, the word "town" may be construed to include cities, &c. Rev. Stat. c. 2, § 6, clause 17.

2 For the law in relation to what constitutes a settlement, see Rev. Stat. c. 45.

power and authority over persons who may be placed under their care, which directors or masters of workhouses have over persons committed thereto, by force of the provisions concerning workhouses, contained in the sixteenth chapter of the Revised Statutes.

Towns may provide almshouses. Ibid, § 4.

4. Any town may erect or provide an almshouse, for the reception and employment of their poor; or any two or more towns may, at their joint charge and for their common benefit, erect or provide such a house, in like manner as they are authorized to join in providing a workhouse, by the said sixteenth chapter of the Revised Statutes.

Certain kindred of poor persons if able, shall support them. Ibid, § 5.

5. The kindred of any such poor person, if any he shall have, in the line or degree of father or grandfather, mother or grandmother, children or grand children, by consanguinity, living within this state, and of sufficient ability, shall be bound to support such pauper, in proportion to their respective ability.

Court of common pleas may assess such kindred. Ibid, § 6.

6. The court of common pleas in the county, where any one of such kindred to be charged shall reside, upon complaint made by any town, or by any kindred, who shall have been at any expense, for the relief and support of such pauper, may, on due hearing, either upon the appearance or default of the kindred supposed to be chargeable, assess and apportion, upon such of the kindred as they shall find to be of sufficient ability, and in proportion thereto, such sum as they shall judge reasonable, for or towards the support of the pauper, to the time of such assessment, and may enforce payment thereof, by an execution in common form; provided, that such assessment shall not extend to any expense for relief, afforded more than six months previous to the filing of the complaint.

Court of common pleas may also assess for futur expenses. Ibid § 7.

7. The said court may further assess and apportion, upon the said kindred, such weekly sum, as they shall judge sufficient for the future support of the pauper, to be paid quarter yearly, until the further order of

court; and upon application, from time to time, of the town, or kindred to whom the same shall have been ordered to be paid, the clerk of said court shall issue and may renew an execution, for the arrears of any preceding quarter.

Costs in such proceedings, how taxed. Ibid, § 8.

8. When the court shall adjudge two or more of the kindred of any pauper to be of sufficient ability to contribute to his support, they shall tax no more costs against any one respondent, than shall have been occasioned by his default or separate defence.

The court may order with whom of such kindred, the pauper shall live. Ibid, § 9.

9. The said court may further order, with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall judge proper, having regard to the comfort of the pauper, as well as the convenience of the kindred.

Proceedings on complaints made to C. C. Pleas. Ibid, § 10.

10. The complaint to be made by any town, or kindred of a pauper, as provided in the forty-sixth chapter of the Revised Statutes, shall be filed in the clerk's office of the court of common pleas, and a summons shall be thereupon issued, requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer, who is qualified to serve civil process between the same parties, and shall be served like an original summons, fourteen days at least before the sitting of the court to which it is returnable.

Other kindred than those named in the complaint may be summoned. Ibid, § 11.

11. Upon a suggestion that there are other kindred of ability, not summoned in the original process, such other kindred may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them, in the same manner as if they had been summoned upon the original complaint.

Court may make new orders from time to time. Ibid, § 12.

12. The said court may take further order, from time to time, in the premises, upon application of any party interested, and may alter such assessment and apportionment, according to the circumstances; and

upon all such complaints, they may award costs to either party, as justice shall require.

13. The said overseers, in their respective towns, shall also provide for the immediate comfort and relief of all persons, residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the town to be charged, as also of their removal or of their burial, in case of their decease, may be sued for and recovered, by the town incurring the same, against the town which is liable therefor, in an action at law; provided, that such action for damages be instituted within two years after the cause of action shall have arisen, but not otherwise.

Overseers, to provide for immediate relief of strangers, &c., and their remedy. Ibid. § 13. 2 Pick. 341.

14. A recovery in such civil action shall bar the town, against which it shall be had, from disputing the settlement of such pauper with the town so recovering, in any future action brought for the support of such pauper.

When a recovery shall establish the fact of settlement R. S. 46, § 14.

15. When any person shall be supported in any town, other than that in which he has his settlement, the town that is liable for his support shall not, in any case, be required to pay therefor more than at the rate of one dollar a week; provided the town that is liable for the support of the pauper shall cause him to be removed, within thirty days from the time of receiving legal notice that such support has been furnished.

Towns removing a pauper within 30 days, to pay only $1 a week. Ibid. § 15. 4 Pick. 45. 7 Pick. 165.

16. The overseers of the poor of each town shall also relieve, support, and employ all poor persons, residing or found in their towns, having no lawful settlements within this state, and in case of their decease, shall decently bury them; the expense whereof may be recovered of their kindred, if they have any chargeable

Overseers shall support, and, in case of decease, bury indigent strangers. R. S. 46, § 16.

Remedy therefor.

by law for their support, in the manner herein before provided; otherwise, it shall be paid out of the treasury of the Commonwealth, as hereinafter provided.

Foreign paupers may be conveyed from the state to the place where they belong. Ibid, § 17.

17. Upon complaint of the said overseers of any town, any justice of the peace, may, by warrant directed to, and to be executed by, any constable, or any other person therein designated, cause such pauper to be sent and conveyed, at the expense of the state, by land or water, to any other state, or to any place beyond sea, where he belongs, if the justice thinks proper, and if he may be conveniently removed; but if he cannot be so removed, he may be sent to, and relieved and employed in, the house of correction or workhouse, at the public expense.

Towns liable to their own inhabitants after notice, &c. Ibid, § 18.

18. Every town shall be held to pay any expense, which shall be necessarily incurred, for the relief of a pauper, by any person, who is not liable by law for his support, after notice and request made to the overseers of the said town, and until provision shall be made by them.

Paupers may be removed to places of settlement. Ibid, § 19.

19. The said overseers may, in all cases, send a written notification, stating the facts relating to any person actually become chargeable to their town, to one or more of the overseers of the place, where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order, directed to any person therein designated, who is hereby authorized to execute the same.

Process in cases of removals. If a removal is not made nor objected to by the town notified, then, &c. Ibid, § 20.

20. If such removal is not effected by the last mentioned overseers, within two months after receiving such notice, they shall, within said two months, send a written answer, stating therein their objections to the removal of the pauper, signed by one or more of them, to one or more of the overseers, requesting such removal; and if they shall fail so to do, the overseers, who requested the removal of the pauper, may cause him to be removed to the said place of his supposed settlement,

by a written order directed to any person therein designated, who is hereby authorized to execute the same; and the overseers of the town, to which the pauper is so sent, shall be obliged to receive and provide for him, and their town shall be liable for the expenses of his support and removal, to be recovered by an action by the town incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Effect of notifications, &c., to towns, sent by mail. Ibid, § 21.

21. The notification and answer, mentioned in the two preceeding sections, may be sent by mail; and such notification or answer, directed to the overseers of the poor of the town, intended to be notified or answered, (the postage being paid and indorsed thereon,) shall be deemed a sufficient notice and answer, and shall be considered as delivered to the overseers, to whom it is directed, at the time when it is received in the post office of the town, to which it is directed, and in which the said overseers reside.

What minor children may be bound out by overseers. Ibid, § 22.

22. The said overseers may bind out the minor children of any poor person, who has become chargeable to their town, as having a lawful settlement therein, or who is supported there in whole or in part at the charge of the state, and also other minor children, who are poor and chargeable to the town, in the manner provided in the eightieth chapter of the Revised Statutes.[1]

Penalty for leaving paupers in towns, to which they do not belong, with intent, &c. Ibid, § 24. 2 Greenl. 5. 1 Pick. 465. 16 Mass. 393. 1849, 66.

23. If any person shall bring into and leave any poor and indigent person in any town of this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his support, he shall forfeit a sum not exceeding one hundred dollars for any such offence; which penalty shall be forfeited to the use of, and may

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1 The 23d section of Rev. Stat. c. 46, was repealed by stat. 1837, c. 178, § 3.

be sued for and recovered by, the town intended to be so charged.

Penalty on ship-masters for landing convicts, &c., from other states. R. S. 46, § 25.

24. If any master or other person, having charge of any vessel, shall therein bring into, and land, or suffer to be landed in, any place within this state, any person before that time convicted, in any other state or in any foreign country, of any infamous crime, or any for which he hath been sentenced to transportation, knowing of such conviction, or having reason to suspect it, or any person of a notoriously dissolute, infamous and abandoned life and character, knowing him to be such, he shall, for every such offence, forfeit a sum not exceeding five hundred dollars.

Overseers, or persons by them authorised, may prosecute, &c. R. S. 46, § 26.

25. In all actions and prosecutions, founded on the provisions of the forty-sixth chapter of the Revised Statutes, the overseers of the poor of any town, or any person by writing under their hands appointed, shall and may appear, prosecute or defend the same to final judgment and execution, in behalf of such town.

Overseers of the poor empowered to take the effects of deceased paupers, and apply them to reimburse expenses. 1837, 54.

26. Upon the death of any pauper, who, at the time of his decease, shall be actually chargeable to any town within this Commonwealth, the overseers of the poor of such town may take into their possession all the personal property belonging to such pauper. And if no administration shall be taken upon the estate of such pauper within thirty days after his decease, the said overseers may sell so much of the said property as may be necessary to repay the expenses incurred for such pauper. And if any part of such property shall be withheld from the said overseers, they shall have the same remedy for the recovery of such property, or the value thereof, that an administrator of the estate of the said pauper might have in like case.

Overseers of poor to make returns respecting paupers. 1837, 194, § 1., 1841, 116, § 1.

27. The overseers of the poor of the several towns in this Commonwealth, shall, on or before the third Wednesday of November in each year, make out and return to the secretary of this Commonwealth, a state-

ment of the paupers in said town,[1] as they are on the first day of said November; which return shall contain true and correct answers to the following inquiries, viz.: What number of persons have been relieved or supported as paupers during the year in your town? Of these, how many have a legal settlement in your town, or elsewhere in this Commonwealth? How many state paupers does your town support? How many of those are foreigners? How many of the foreigners are from England and Ireland? Have you an alms-house? What number of acres of land is attached to your alms-house? What is the estimated value of your alms-house establishment? What number of persons have been relieved in your alms-house during the year? What is the average number supported in alms-house? What is the average weekly cost of supporting each pauper in alms-house? What number of persons in your alms-house who are unable to perform any kind or amount of labor? What is the estimated value of all the labor performed by paupers in your alms-house? How many persons do you aid and support out of alms-house? What is the average weekly cost of supporting paupers out of alms-house? How many does your town support or relieve who are insane? How many do you relieve or support who 1844, 146. are idiots? What number of persons relieved or supported as paupers during the year in your town, have become paupers by reason of insanity or idiocy? 1837, 194, § 1. What proportion of your paupers, in your opinion, have been made dependent by intemperance in themselves, or those who ought to have been their supporters? What number of your foreign paupers have come into this Commonwealth within one year? What is the total net amount of expense of supporting or relieving paupers in your town for one year, including inter-

[1] See note to § 1, p. 152, *ante*.

est on your alms-house establishment? What amount does your town receive from the treasury of this Commonwealth towards the support of state paupers? And the secretary of this Commonwealth shall, in the month of September annually, furnish the overseers of the poor of each town with a blank form of return which shall contain in substance the foregoing interrogatories.[1]

1841, 116, § 1.

Penalty for not making return. 1837, 194, § 3.

28. If the overseers of the poor of any town in this Commonwealth, shall refuse or neglect to make the return as aforesaid, they shall forfeit a sum not exceeding one hundred dollars, to be recovered by indictment in any court of competent jurisdiction.

Overseers and directors to make returns of children under 14, supported at public charge. 1848, 247, § 1.

29. The overseers of the poor of the several towns, and the directors of the alms-houses of the several cities, shall make, and transmit to the secretary of the Commonwealth, on or before the third Monday in November, in each and every year, correct returns of all the children in their respective towns and cities, under fourteen years of age, who are supported at the public charge; and, in said returns, shall specify the name, age, and sex of each child so supported.

Blank forms to be provided, &c. Ibid, § 2.

30. Suitable blank forms for such returns shall be furnished to each town and city by the secretary of the Commonwealth; and he shall prepare yearly abstracts thereof, and shall lay the same before the general court.

STATE PAUPERS.

Who shall not be considered state paupers. R. S. 46, § 30.

31. No male person over the age of twelve years, while of competent health to labor, shall be considered a state pauper, and entitled to support as such.

Rates of charge for state paupers. Ibid, § 32.

32. All accounts against the Commonwealth, presented for allowance by any city, town, or keeper of any house of correction, for the support of state pau-

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1 Stat. 1837, c. 194, § 2, and 1841, 116, § 2, make it the duty of the secretary of state to make out abstracts of such returns, for the use of the legislature.

pers, shall be made out and charged at a fixed price by the day, and the allowance shall not exceed, in any case, seven cents a day, for the support of paupers over twelve years of age, and four cents a day for the support of paupers under that age, and five dollars for the funeral expenses of each pauper over twelve years of age, and two dollars and fifty cents, for the funeral expenses of each pauper under that age.

Particulars of account for state paupers, and how certified. Ibid, § 33.

33. All accounts made out against the Commonwealth, for the support of state paupers, shall show the name of each pauper, his age and place of nativity, and the time when he first came into this state, the time when he became chargeable, and when he ceased to be so, or, in case of his death, the time of his death, or if he still continues chargeable, the time to which such charge is made, and the number of days for which each of said paupers has been chargeable; and in all cases, where said charge is for the support of any pauper, not already mentioned on the list of state paupers, said account shall be accompanied by a certificate of the overseers of the poor of the towns, stating that neither of said paupers has a legal settlement in this state, and also that he has no kindred within this state obliged by law to support him; and in all such certificates, the said overseers, shall state that they made the same on the best evidence they could obtain, and that no part of the account is for the support of any person over the age of twelve years, while of competent health to labor.

Accounts to be rendered yearly on or before the 3d Wednesday of November. 1841, 116, § 3.

34. All accounts against the Commonwealth for allowance to cities and towns for support of state paupers shall be rendered to the secretary of the Commonwealth on or before the third Wednesday of November annually, and shall be so made as to include all claims for such charges up to the third day of the said month of November, and the secretary shall lay all accounts so received before the legislature at the opening of the session thereof.

Certificate that whole amount has been expended. R. S. 46, § 31.

35. The selectmen, or overseers of the poor, of any town, or the keeper of any house of correction, shall certify that the whole amount charged in their account has been expended, for the support of the persons named in the same, for the time therein specified.[1]

Accounts for support of state paupers sick with infectious disease, to what time to be made up, and when rendered. 1849, 151, § 1.

36. All accounts against the Commonwealth for allowance to cities and towns for support of state paupers sick with an infectious disease, dangerous to the public health, shall be so made out as to include all claims for such support up to the first day of November, annually; and shall be rendered to the secretary of the Commonwealth, on or before the third Wednesday of said November.

Accounts for support of lunatic paupers. Ibid, § 2.

37. All accounts against the Commonwealth, for allowance for the support of lunatic state paupers, shall be so made out as to include all claims for such support up to the first day of December, annually, and shall be rendered to the secretary of the Commonwealth, on or before the third Wednesday of said December.[2]

Secretary shall transmit claims to auditor of accounts. Ibid, § 4.

38. It shall be the duty of the secretary of the Commonwealth to transmit all claims against the Commonwealth, rendered to his office, to the auditor of accounts.

Terms on which accounts not duly rendered may be allowed. 1851, 42, § 1.

39. From all accounts for the support of state paupers, which shall not be rendered to the secretary of the Commonwealth within the time now prescribed by law, there shall be deducted ten per cent. on the proper amount, as ascertained after examination and correction, by the auditor of accounts, as a penalty for delay in rendering the same; and in case such return shall not be made on or before the expiration of the month of December, in the same year, there shall be a further

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1 The remainder of Rev. Stat. c. 46, § 31, appears to be repealed, in effect, by stat. 1841, 116, § 3; i. e. § 34 of the text.

2 The third section of the act of 1849, c. 151, was repealed by act 1851, c. 42, § 2.

deduction of five per cent. of the amount ascertained to be due, and a further deduction of five per cent. for each succeeding month during which such return shall be delayed.

Accounts for support of state lunatic paupers to be accompanied by proof of suitable support. 1849, 207.

40. Whenever any county of this Commonwealth shall present any claim or claims for the support of any state lunatic pauper, it shall be the duty of said county to present satisfactory evidence to the committee, to which such claim or account may be referred, that said insane person has been supported in a suitable and comfortable manner, and at an expense equal to the amount to be allowed by the Commonwealth, and that no allowance or payment shall be made unless this act shall have been complied with.

When state alms houses are completed, governor to issue proclamation. Cities and towns may send state paupers to such institutions. 1852, 275, § 3.

41. The act of 1852, c. 275, in relation to paupers having no settlement in this Commonwealth, provides by § 3, that after the completion of the three state institutions, to be erected by the provisions of said act, the governor, upon being notified of that fact by the said commissioners, shall issue his proclamation accordingly; and thereupon the several cities and towns in the Commonwealth shall have a right to send to one of said institutions, to be maintained at the public expense, all paupers not having a settlement within the Commonwealth who are then receiving support from, or who may thereafterward fall into distress in said cities or towns; that is to say, the cities and towns in the counties of Suffolk, Middlesex, or Essex, may send such persons to the institution to be established as aforesaid in the county of Middlesex or the county of Essex; the cities and towns in the counties of Norfolk, Bristol, Plymouth, Barnstable, Nantucket, or Dukes county, to the institution to be established as aforesaid in the county of Bristol or the county of Plymouth, and the remaining cities and towns in the Commonwealth to the institution to be established as aforesaid in the western part of the Commonwealth.

Cities and towns to receive nothing from Commonwealth for expenses afterwards incurred. Ibid, § 4.

42. No city or town shall receive any payment or allowance from the Commonwealth for the expense of supporting any such pauper, incurred more than thirty days after the issuing of such proclamation.

Punishment of inmates leaving without consent and found begging. Ibid, § 2.

43. If any inmate of either of said institutions, above the age of sixteen years, shall leave the same without the consent of the inspectors thereof, and shall, within one year from the time of such leaving, be found within any city or town of the Commonwealth soliciting public or private charity, he shall, upon complaint and proof thereof before any police court or justice of the peace, be punished by confinement to hard labor in the house of correction for the county within which he shall be so found, for a term not exceeding three months.

Provision for state paupers when the State institutions are full. 1858, 354, § 4.

44. If in any city or town there shall be remaining any state paupers after the three state institutions for their reception are full, such state paupers shall be placed in the district poor houses and such city or town shall receive payment for them from the treasury of the Commonwealth.[1]

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[1] For other general provisions respecting paupers, work-houses, settlement, &c., see Rev. Stat. c. 16, 45, 143; 1837, c. 178; 1839, c. 156; 1841, c. 77; 1846, c. 88; 1848, c. 291; 1852, c. 275; 1853, c. 352, 388. For other provisions respecting alien passengers see acts of 1837, c. 238; 1840, c. 96; 1845, c, 76; 1848, c. 313; 1850, c. 105, 292; 1851, c. 342; 1852, c. 279; 1853, c. 360. See also Workhouse *post*.

POLICE COURT.

STATUTES.

1. Police court established.
2. Appointment of justices and special justices.
3. Court, when to be held by special justices.
4. Jurisdiction in criminal cases.
5. All warrants issued within the district returnable to the police court.
6. Jurisdiction in civil actions.
7. Same subject.
8. Appeal allowed to C. C. P.
9. Justice to account for all fines, &c., received.
10. Costs in criminal cases, how allowed and paid.
11. General power and duties of the police court.
12. Certain offenders may be committed to work-house.
13. Where court shall be held.
14. Compensation of special justices.
15. Salary of standing justice.
16. Mayor and aldermen to appoint a clerk. Justice may appoint clerk *pro tem.*
17. Clerk's oath and bond.
18. Duty of clerk.
19. Same subject.
20. To receive and account for moneys.
21. Same subject.
22. Compensation of special justices.
23. Compensation of clerk.
24. Jurisdiction of court extended. Justices of the peace may issue warrants returnable before police court. Costs on such warrants.
25. Jurisdiction in bastardy cases. Appeals in all cases to C. C. P.
26. Justices and clerk not to be counsel or attorney.
27. Times of holdings courts.
28. Jurisdiction of court not affected by interest of justice in payment of fines and costs to city or county.
29. Inconsistent laws repealed.
30. Commitment of vagabonds, &c., to workhouse.
31. Same subject.
32. In what cases convicts may be punished by a fine instead of imprisonment.
33. Reports to be made by police court.
34. Returns of moneys to be made.
35. Penalty for neglect to make returns.
36. Returns of moneys and disposition of same to be made.
37. Malicious injury of personal property made punishable.
38. Jurisdiction of justices of peace to punish last named offence.
39. Jurisdiction of certain assaults.
40. Of larcenies.
41. Of fornication.
42. Appeals allowed.
43. Jurisdiction of shopbreaking and aggravated larceny modified.
44. Further power of police court.
45. Standing justice shall not receive any compensation besides his regular salary.
46. Jurisdiction extended to all assaults, &c., unless made, with intent to commit other offence, or dangerous to life, or followed by maiming.
47. Police courts may decline to take final jurisdiction of aggravated assaults.

STATUTES.

Police court established. 1831, 70, R. S. 87, § 29.

1. The town of Salem shall constitute a judicial district, under the jurisdiction of the police court of Salem.

Appointment of justices and special justices. Ibid, § 30.

2. There shall be one standing justice and two special justices in said judicial district. The justices now appointed shall continue to hold their offices, according to the tenor of their commissions and as vacancies occur, others shall be appointed in the manner provided by the constitution.[1]

Court, when to be held by special justices. Ibid, § 31.

3. The said courts shall be held by the standing justice thereof, except that when the standing justice is interested in any case, pending or cognizable in his court, or is absent, or otherwise unable to hear and determine the same, the fact shall be stated on the record, and the case shall be heard and determined by one of the said special justices, who shall, upon notice of the fact, attend and hold the court for that purpose, and perform all the duties of the standing justice relating to such case.

Jurisdiction in criminal cases. Ibid, § 32.

4. The said court shall have the same jurisdiction, in criminal suits and prosecutions, and in all matters relating to treason, felonies and other crimes and misdemeanors, committed within the county of Essex, or relating to persons found therein, and charged with any of the said offences, which justices of the peace have in said county.[2]

All warrants issued within the district to be returnable to the police court. Ibid, § 33.

5. All warrants issued by the said court, or by any justice of the peace in said judicial district, in any criminal suit or prosecution, shall be returnable before the police court of the district, and no fees shall be allowed to any justice of the peace, for any such warrant, unless it shall appear to the court, that there was just and reasonable cause for issuing it[2].

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1 The remainder of this section is repealed by statute of 1847, c. 270.

2 See statute 1853, c. 57, § 10, *post* § 24, p. 171.

Jurisdiction in civil action. Ibid, § 34. 1833, c. 81, § 1.

6. The said court shall also have jurisdiction, concurrently with the justices of the peace, of all civil actions in their respective counties, which are within the jurisdiction of justices of the peace, and the jurisdiction of said court shall be exclusive, in all civil actions, when the plaintiff and defendant both reside within their respective districts.[1]

Same subject. R. S. 87, § 35.

7. When there are two or more plaintiffs or defendants, the jurisdiction of the said court shall not be exclusive, unless all the said parties shall reside within the judicial district.[1]

Appeal allowed to C. C. P. Ibid § 36.

8. Any party, aggrieved by the judgment of the said court in any case, whether civil or criminal, may appeal therefrom to the court of common pleas, for the county of Essex, and all such appeals shall be entered, conducted and disposed of, in all respects, like appeals from justices of the peace to the court of common pleas.[2]

Justices to account for all fines &c received. R. S. 87. § 38. 1853, c. 57, § 7.

9. All fines and forfeitures received by the said justice, and all costs, in criminal prosecutions, received by him, except his own fees, shall be accounted for and paid over, in the same manner, and under the same penalties for neglect, as are prescribed with regard to justices of the peace.[3]

Costs in criminal cases, how allowed and paid. R. S. 87. § 39. 1853. c. 57, §§ 6,7.

10. All costs and charges arising in criminal prosecutions which shall not be paid to the said justice as above provided, shall be taxed, certified, allowed and paid in like manner, as is by law provided in the case of prosecutions before justices of the peace.

General powers and duties of the police court. R. S. 87, § 40.

11. The powers and duties of the said police court, in all matters not herein expressly provided for, shall be the same as those of justices of the peace in the like cases.

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1 See statute of 1853, c.57, § 10, *post* § 24, p. 171.

2 Section 37 is repealed by act of 1853, c. 57, § 2, see *post* § 16, p. 168.

3 See statute of 1853, c. 57, § 7, *post* p. 170, § 21.

Certain offenders may be committed to the work-house. R. S. c. 87, § 41. 1833, c. 81, § 1. 1787, c. 57.

12. Every person, being an inhabitant of any town, within said judicial district, who shall be brought before said court, and shall be liable to be sent to the house of correction, as a rogue or a vagabond, or an idle or disorderly person, may be committed to the work-house, if there be any, in the town of which he is an inhabitant; to be there kept, governed and employed, according to the rules of the said work-house, and the expense of supporting and employing such person shall be paid, and may be recovered, in the same manner, that is provided in the one hundred and forty-third chapter, in case of a like commitment to the house of correction.

R. S. 143.

Where court shall be held, R. S. c. 87, § 42.

13. Every police court shall be held within the district for which it is established, in the court house, if there be one, or in any other suitable place, to be provided at the expense of the district, and may be adjourned to any other place in the same district, as occasion shall require.[1]

Compensation of special justices. Ibid, § 46.

14. Every special justice, when officiating in the police court, shall receive and retain for his services all such fees, as would be taxable by law for the like services, when performed by a justice of the peace.[2]

Salary of standing justices 1853, 57, § 1.

15. The standing justice of the police court of the city of Salem, shall receive an annual salary of not less than twelve hundred dollars, the amount of which, if above that sum, shall be determined, not oftener than once in each year, by the concurrent vote of the two branches of the city council of said city; and said salary shall be paid to him, in equal quarterly payments, out of the treasury of said city, and shall be in full for all services which he now is, or may hereafter be required or authorized to perform, as said justice.

Mayor and alder-

16. The mayor and aldermen of the city of Salem

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1 The three succeeding sections of R. S. c. 87, are repealed, being inconsistant with the provisions of the act 1853, c. 57.

2 See statute of 1853, c. 57, § 8, *post* § 22, p. 170.

shall forthwith, and hereafter in the month of May, annually, and whenever a vacancy may occur, appoint a suitable person to be clerk of said police court, who shall be paid for his services as said clerk, as hereinafter provided; and in the case of the absence or death of said clerk, the said justice may appoint a clerk *pro tempore*, who shall be paid at the rate of two dollars per diem, to be deducted from the salary of the standing clerk, and for whose official acts and doings the said justice shall be responsible, and who shall officiate as clerk until the standing clerk shall resume the performance of his duties, or until another clerk shall be duly appointed.

dermen to appoint clerk. Ibid § 2.

Justice may appoint clerk *pro tem.*

17. The clerk shall be sworn to the faithful performance of his duties, and shall give bond to the city of Salem, in such sum as the board of mayor and alderman of said city shall from time to time order, with a surety or sureties to the acceptance of the city treasurer, with condition for the faithful performance of the duties of his office, and of the duties prescribed to him in this act.

Clerk's oath and bond. Ibid § 3.

18. The clerk shall attend all sessions of the said court, whether for the transaction of criminal or civil business, and shall keep a record of all the proceedings of said court; and the records of proceedings in civil cases shall be kept in a different book and separate from the records of proceedings in matters of a criminal nature.

Duty of clerk. Ibid 4.

19. The said clerk shall make all warrants, writs and processes which shall be ordered by said court, and tax all bills of costs, and receive all fines and forfeitures, and fees, awarded and payable in said court, and all fees for blanks and for copies in civil and criminal suits.

Same subject. Ibid § 5.

20. All fees and charges, both in civil and criminal proceedings, now by law received by or payable to the said standing justice, shall be received by said clerk, and by him accounted for quarterly to the treasurer of said city of Salem, and he shall forthwith pay over the amounts due thereon to said treasurer.

To receive and account for moneys. Ibid § 6.

Same subject. Ibid § 7.

21. All fines and forfeitures received by said clerk, or by said justice, and all costs in criminal prosecutions so received, except the fees and charges named in the sixth section of this act, shall be accounted for and paid over by said clerk in the same manner and under the same penalties for neglect as are now prescribed with regard to the standing justice of said court.[1] And all costs and charges arising in criminal prosecutions, which shall not be paid by said clerk, as above provided, shall by said clerk be taxed, certified, allowed and paid in like manner as is now provided with regard to said standing justice.

Compensation of special justices. Ibid § 8.

22. Whenever the said police court shall be held by either of the special justices thereof, the said special justices shall receive in compensation for their services, the fees to which they are by law entitled: *provided, however*, that when the sum of one hundred dollars shall have been thus earned in any one year, by either or both of said special justices, the said special justices shall thereafter be paid in full for their services as such justices, at the rate of four dollars per diem, to be deducted from the salary of the standing justice; and the fees to which they or either of them would otherwise be entitled, shall be received by the clerk and by him accounted for, and paid to the city treasurer, as hereinbefore provided with regard to the standing justice.

Compensation of clerk. Ibid § 9.

23. The said clerk shall receive, in full compensation for all his services as said clerk, except for such copies as he is not by law bound to furnish, an annual salary of not less than seven hundred dollars, the amount of which, if above that sum, shall be determined, not oftener than once in each year, by the concurrent vote of the two branches of the city council of said city of Salem, and said salary shall be paid, in equal quarterly payments, out of the treasury of the city of Salem.

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[1] See R. S. c. 87, § 38, *ante* § 9, p. 167.

24. The said police court, in addition to the jurisdiction which it now has, shall have exclusive jurisdiction of all crimes, offences and misdemeanors, committed within the said city of Salem, whereof the said police court and justices of the peace for the county of Essex now have jurisdiction; and said police court shall also have original jurisdiction and cognizance of all suits and actions whereof any justice of the peace in the county of Essex now has or hereafter may have jurisdiction, and exclusive jurisdiction, wherever any person summoned as trustee in any such action resides in the city of Salem, and service has been duly made on said supposed trustee: *provided*, that nothing in this act contained shall prevent any justice of the peace within the county of Essex, from issuing a warrant in any criminal suit or prosecution within said county, returnable before said court; but no fees shall be allowed to any justice of the peace for any such warrant, unless it shall appear to the court that there was just and reasonable cause for issuing it.

Jurisdiction of court extended Ibid § 10.

Justices of the peace may issue warrants returnable before police court.

Costs on such warrants.

25. The standing justice of the said court, or either of the special justices, or any justice of the peace of the county of Essex, may issue a warrant under the forty-ninth chapter of the Revised Statutes, and such warrant may be made returnable before said police court; but no justice of the peace within the city of Salem shall exercise any further jurisdiction than to issue such warrant; and any party aggrieved by the judgment of said court, in any case, whether civil or criminal, may appeal therefrom to the court of common pleas for said county of Essex, in the same manner now provided for appeals from said police court.

Jurisdiction in bastardy cases Ibid § 11.

Appeals in all cases to C. C. P.

26. Neither the standing justice, nor the clerk, shall be retained or employed as counsel or attorney, in any suit, complaint, application, petition, or other proceeding whatever, before said court, nor in any which shall have been heard or examined therein; and neither of

Justices and clerk not to be of counsel or attorney. Ibid § 12.

the special justices shall be retained or employed as counsel or attorney in any matter which shall have been heard or examined before them respectively.

Times of holding courts. Ibid § 13.

27. A court shall be holden by the said standing justice, or one of the special justices, at some suitable and convenient place, to be provided at the expense of the city of Salem, on every day of the week, Sundays excepted, at nine of the clock in the forenoon, to take cognizance of crime, offences and misdemeanors, and on one fixed day of each week, at ten of the clock in the forenoon, and by adjournment as much oftener as may be necessary, for the entry and trial of civil actions, the hearing of motions, and such other civil business as may come before it.

Jurisdiction of court not affected by interest of justices in payment of fines and costs to city or county. Ibid § 14.

28. The jurisdiction of the police court of the city of Salem shall not be limited by reason of any interest on the part of the justices of said court, or either of them, in the payment of fines and costs into the treasury of the city of Salem, or of the county of Essex.

Inconsistent laws repealed. Ibid § 15.

29. All acts and parts of acts, inconsistent with the fourteen next dreceding sections were repealed by § 15 c. 57 of the acts of 1853.[1]

Commitment of vagabonds, &c., to work house. R. S. 143. § 5.

30. Any police court or justice of the peace, and also the court of common pleas and municipal court, may commit to the house of correction, to be there kept and governed according to law, and to the rules and orders thereof, all rogues and vagabonds, and all idle and dissolute persons, who go about begging; all persons who use any juggling, or unlawful games or plays; common pipers and fiddlers; stubborn children, runaways, common drunkards, common night walkers, pilferers, and all lewd, wanton, and lascivious persons, in speech or behavior; common railers and brawlers,

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1 Section 16 of the act of 1853, c. 57, provided that said act should be in force and take effect from and after its acceptance by the city of Salem, by the concurrent vote of the two branches of the city council of said city. The act was accepted as required, by the city council, March 21, 1853. [*City Records vol.* 3, *p.* 52.]

and persons who neglect their calling or employment, misspend what they earn, and do not provide for themselves, or for the support of their families; all persons who shall sell any spiritous or fermented liquors without license, in the open air, in any booth or other temporary building, in any house, shop, room or apartment, used for the purpose of tippling or gaming, or in which tippling or gaming is allowed, or which is used for the resort of loose, lascivious, wanton, or dissolute persons; all persons who shall be convicted of stealing money or goods, not exceeding the value of five dollars, and all other idle and disorderly persons, upon conviction, in the manner hereafter provided, of any of the offences aforesaid.

Same subject. Ibid § 6.

31. When any person shall be accused of any offence, or of any disorderly conduct, mentioned in the preceding section, or shall be liable, by virtue of any law of this Commonwealth, to be committed, for any cause, to the house of correction of the county, or to the house of industry or workhouse established in any town, complaint shall be made in writing, under oath, to a justice of the peace for the county, or to a police court for the town where the offence shall be committed, and such magistrate shall thereupon cause the person complained of to be brought before himself, or before some other magistrate, by warrant, and upon conviction of the offence set forth in such complaint, such person may be sentenced to be committed to the house of correction for the county, or to the house of industry or workhouse, within the city or town, there to be kept at work for a term not exceeding six months; and the master, keeper, director or overseer of such house, shall receive all persons who shall be so committed, and set them to work, if they be able, and employ and govern them, while they remain in his custody, in the manner required by law, and prescribed by the rules and orders established for that purpose.

In what cases convicts may be punished by a fine instead of imprisonment. 1837. 157.

32. Whenever any person shall be convicted, by a justice of the peace or police court, of any offence mentioned in the one hundred and forty third chapter of the Revised Statues, and which may be punished by imprisonment, he may instead thereof, at the discretion of the court, be punished by fine, not exceeding twenty dollars, either with or without a condition, that if the sum be not paid within a time fixed by the court, with the costs of prosecution, he shall suffer any such imprisonment as is provided in said chapter; and such conditional sentence shall be carried into execution, according to the provisions of the second and third sections of the one hundred and thirty ninth chapter of the Revised Statutes.

Reports to be made by police courts. 1839, 157 § 2.

33. The several police courts shall on or before the fifteenth day of January, of each year, transmit to the attorney general a report of the number of complaints acted upon in such court, the crimes, offences, or misdemeanors for which such complaints were made, the results thereof, and the punishments awarded against any persons convicted thereon, together with the amount of the bill of costs taxed in each case, and how the same was paid; and said report shall be made to the last day of the preceding month of December.

Return of moneys to be made. 1851, 216 § 1.

34. All trial justices, justices of police courts, commissioners of insolvency, clerks of courts, and other officers whatsoever in the Commonwealth, receiving costs, fees, fines, forfeitures, or other moneys, which they are required by law to pay over or to account for to the treasurer of the Commonwealth, treasurers of counties, or other public authority, shall, on or before the fifteenth day of January, annually, return to the secretary of the Commonwealth, under oath, a true account of all moneys received by them from all sources, by virtue of their office, for the year ending on the first Wednesday of the same January.

Penalty for neg-

35. If any officer shall neglect or omit to make the

return required by this act, he shall forfeit the sum of two hundred dollars, to be recovered by indictment in any competent court of the Commonwealth.

lect to make returns. Ibid § 2.

36. It shall be the duty of all officers who are required by the two hundred and sixteenth chapter of the statutes of the year one thousand eight hundred and fifty-one, to make returns of all moneys received by them by virtue of their office, also to state what disposition has been made of the same.

Returns of moneys and disposition of the same to be made. 1852, 289 § 2.

37. Every person who shall wilfully and maliciously destroy or injure the personal property of another person, in any manner or by any means, not particularly described or mentioned in the one hundred and twenty-sixth chapter of the Revised Statutes, shall, when the value of the property so destroyed or injured, or the injury occasioned to the same, shall not be alleged to exceed the sum of fifteen dollars, be punished by imprisonment in the county jail or house of correction, not more than thirty days, or a fine not exceeding fifteen dollars.

Malicious injury of personal property made punishable. 1846. 52 § 1.

38. Every justice of the peace shall have jurisdiction, concurrent with the court of common pleas in his county, of the aforesaid offence: *provided, however*, that the party convicted before such justice shall have the right to a trial by jury on his appeal as in other like cases.

Jurisdiction of justices of peace to punish last named offence. Ibid § 2.

39. The several police courts of this Commonwealth shall have concurrent jurisdiction with the municipal court of the city of Boston, and the court of common pleas, of all cases of assault and battery committed upon any constable, police officer, or watchman, while in the discharge of his duty as such officer, except in cases where such assault and battery shall be committed with a dangerous or deadly weapon, or with intent to kill, or when life is endangered. And, for such assault and battery, said police courts may punish by fine, not exceeding thirty dollars, or by imprisonment in the house of correction not more than six months.

Jurisdiction of certain assaults. 1849, 132, § 1.

Of larcenies. Ibid § 2.

40. The said police courts shall have concurrent jurisdiction with said municipal court, and court of common pleas, of all larcenies mentioned in the seventeenth section of the one hundred and twenty-sixth chapter of the Revised Statutes, when the money, or other property stolen, shall not be alleged to exceed the value of twenty-five dollars; in all which cases, the punishment shall be by fine not exceeding thirty dollars, or by confinement in the house of correction not more than six months.[1]

Of fornication. Ibid, § 3.

41. The said police courts shall have concurrent jurisdiction with said municipal court, and court of common pleas, of all cases arising under the fifth section of the one hundred and thirteenth chapter of the Revised Statutes, in which cases the punishment shall be by imprisonment in the county jail not more than three months, or by fine not exceeding thirty dollars.

Appeals allowed. Ibid, § 4.

42. Any person, convicted under the provisions of the three next preceding sections, may appeal to the municipal court, or court of common pleas, and the appeal shall be allowed on the same terms, and the proceedings therein conducted in all respects, as provided in the one hundred and thirty-eight chapter of the Revised Statutes respecting appeals from justices of the peace.

Jurisdiction of shop breaking and aggravated larceny modified. 1852, 4 § 1.

43. The fourth section of an act relating to shop breaking and aggravated larceny, chapter one hundred and fifty-six, passed May the fifteenth, eighteen hundred and fifty-one, is so far modified, that justices of police courts, and justices of the peace, may, in their discretion, take jurisdiction; and punish by fine not exceeding twenty dollars, or by imprisonment in the county jail or house of correction not exceeding one year, where the money or property stolen shall not exceed in value the sum of ten dollars.

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[1] See § 43 *post*.

44. The several police courts in the Commonwealth may exercise all the powers and perform all the duties given to and required of justices of the peace by the laws of this Commonwealth, in and for the several counties in which said courts are respectively located.

Further powers of police courts. 1852, 46.

45. No standing justice of any police court, who is paid by a fixed salary, shall receive any compensation, besides his regular salary as said justice, for making or issuing, in any capacity whatever, complaints, warrants, subpœnas, or other criminal process, which said justice is by law authorized to issue.

Standing justice shall not receive any compensation besides his regular salary. 1852, 159.

46. The several police courts of this Commonwealth, in addition to the jurisdiction now exercised by them in cases of assault and battery, shall have concurrent jurisdiction with the municipal court of Boston and the court of common pleas in the several counties of the state, of all cases of assault and battery, except where such assault and battery shall be committed with intent to commit some other offence, or with a weapon dangerous to life, or where the life of the person assaulted is endangered, or where the person assaulted is maimed; and for such assault and battery, said courts may punish by fine not exceeding thirty dollars, or by imprisonment in the county jail or house of correction, not exceeding six months.

Jurisdiction extended to all assaults, &c., unless made with intent to commit other offence, or dangerous to life, or followed by maiming. 1853, 196 § 1.

47. Said police courts may, in their discretion, decline to take final jurisdiction of any case of aggravated assault and battery, and may send the same, as now, to the court of common pleas, or to the municipal court of Boston for trial; and any person convicted under the provisions of this act, shall have the right of appeal in the same manner that it is now possessed by persons convicted of assault before a police court.[1]

Police courts may decline to take final jurisdiction of aggravated assaults. Ibid § 2.

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1 See special acts relating to Salem Police Court 1833 c. 81, all the provisions of which are re-enacted in the Revised Statutes although said act has not been expressly repealed.

For provisions respecting police courts See R. S. c. 87 § 29—46; c. 135; c. 143; 1837, c. 157, 217; 1839, c. 157; 1846, c. 52; 1851, c. 216; 1852, c. 4, 289, 312; 1853, c. 196, 269.

POLICE OFFICERS.

STATUTE.

The mayor and aldermen may appoint police officers.

Mayor and aldermen may appoint police officers. 1851, 162.

The mayor and aldermen of the several cities and the selectmen of the several towns in this Commonwealth, may, from time to time, appoint such police officers for their respective cities and towns, as they may judge necessary, with all or any of the powers of the constables, except the power of serving and executing any civil process; and the said police officers shall hold their offices during the pleasure of the mayor and aldermen, and selectmen by whom they are respectively appointed.[1]

RECORDS.

STATUTES.

1. City government, &c., to provide for preservation of public records.
2. Same subject. Copies of old records to be made.
3. City clerk to keep records.
4. Records to be open to public. Penalty for defacing.
5. Records of proprietors of townships and of common lands, not otherwise disposed of, to be deposited with city clerk.

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[1] The law does not require that a police officer, appointed pursuant to this statute, should be sworn to the faithful discharge of the duties of his office; and therefore a party indicted for assaulting such police officer, and obstructing him in the discharge of the duties of his office, cannot defend by showing that he had never been sworn. *Commonwealth v. Dugan*, (12 Metc. 233.) See also *Commonwealth v. Hastings*, (9 Metc. 259.)

2. One city or town may make copies of records of another.
7. Penalty for non-compliance.
8. Records of churches, &c., not otherwise disposed of, to be deposited with clerk of city or town.

STATUTES.

City government &c., to provide for preservation of public records. 1851, 161, § 1.

1. It shall be the duty of the county commissioners of the respective counties, the city government of cities, and the selectmen of the several towns in this Commonwealth, to have all books of public record or registry, belonging to said counties, cities or towns, respectively, well and strongly bound, and other papers and documents duly filed and arranged in a careful and orderly manner, convenient for examination and reference. They shall also provide, at the expense of the county, town or city, a suitable place for the safe keeping and preservation of the public records and other valuable documents, where they shall be deposited and securely kept.

Same subject. Ibid § 2.

2. It shall be the duty of the county commissioners of the respective counties, the city government of cities and the selectmen of the several towns of the Commonwealth, to provide for the particular security and preservation of all the records of their respective counties, cities and towns; and in cases where, from any cause, they have or may become worn, mutilated or illegible, it shall be their duty to have a fair copy of such records seasonably taken, by competent and skilful transcribers, at the expense of the county, town or city, to be preserved in like manner as the originals, the same to be certified to be true copies from the originals, by the clerk of such county, city or town.

Copies of old records to be made.

City clerk to keep records. Ibid § 3.

3. It shall be the duty of each clerk or register of any county, city or town, in this Commonwealth, to keep all records and written documents in his sole custody, and in no case, except upon summons, in due form of law, to have them, or cause or permit them, to be removed or taken away, under a penalty for each offence not exceeding ten dollars.

Records to be open to public. Penalty for defacing. Ibid § 4.

4. All county, city or town records and files, shall be open to public inspection, under direction of the officers having them in legal custody; and any person who shall be guilty of taking and carrying away any book of record, paper or written document, or of defacing, altering or mutilating the same, by mark, erasure, cutting or otherwise, shall forfeit and pay a sum not exceeding fifty dollars to the use of the Commonwealth: *provided*, that any person may take copies of such records under the direction of the officer having the same in charge.

Records of proprietors of townships and of common lands, not otherwise disposed of, to be deposited with city clerk. Ibid § 5.

5. The legal custody of the books of record and other documents of the ancient proprietors of townships, or of common lands within the cities or towns of this Commonwealth, in case such proprietors shall have ceased to be a body corporate, shall, when not otherwise legally disposed of or provided for by such proprietary body before its dissolution, be vested and held to be in the clerk, for the time being, of the city or town in which such lands lie, if the same lie wholly in any one city or town, otherwise in the clerk, for the time being, of the city or town wherein is situated a larger portion of such land than in any other city or town, and the said clerk may make and certify any copies of such records, in the same manner as the clerk of the proprietors may have done; and it shall be the duty of the clerk of any city or town, to claim such proprietary records and papers, and any person unlawfully holding the same, who shall refuse, upon such demand, to surrender them, shall be punished by a fine not exceeding fifty dollars.

One county city or town may take copies of records of another. Ibid § 6.

6. The commissioners of any county, the mayor and aldermen of any city, or the selectmen or overseers of the poor of any town, in this Commonwealth, are hereby authorized, when the interest of such county, city or town shall so require, to have copies taken for the use of said county, city or town, by a skilful and competent hand, at the expense of the said county, city or town,

of any original records, or parts of the same, or of any papers or documents in the legal custody of any other county, city or town, which copies shall be certified to be true copies by the clerk of the county, city or town, from which they are taken, and shall be subject to the like control, care and regulations, as the other records and files of the county, city or town, for whose use they are taken.

Penalty for non-compliance. Ibid § 7.

7. Any county, city or town, neglecting or refusing to fulfil the requirements of this act, or any one of them, shall forfeit and pay for each offence the sum of twenty dollars. Any county, city or town clerk, neglecting or refusing to fulfil the requirements of this act, or any of them, shall forfeit and pay for each offence the sum of ten dollars.

Records of churches, &c. not otherwise disposed of to be deposited with clerk of city or town. Ibid § 8.

8. In case any church or religious society, in this Commonwealth, shall be dissolved, or cease to have a legal existence, and the care of the records and registries of such church or society shall not have been otherwise provided for in due form of law, it shall be the duty of the clerk of such church or society, or other person holding such records and registries, to deliver them into the custody of the clerk of the city or town in which such church or society was, who shall have authority to certify copies from the same; and in case of refusal to surrender the same, upon due notice and demand by such clerk, the offender shall pay a fine not exceeding fifty dollars.

REGISTRY OF BIRTHS, MARRIAGES AND DEATHS.

STATUTES.

1. City clerk to record all births and deaths in the city.
2. Parents and others to give notice to city clerk, of births and deaths.

3. Clerks to transmit to secretary of the commonwealth, copies of record of births, marriages and deaths. Births, how to be recorded, and with what particulars. Marriages. Deaths.
4. School committees to make annual returns of births to town and city clerks
5. Persons solemnizing marriages, to keep a record thereof, and to make returns, monthly, to town and city clerks.
6. Persons having charge of burial grounds, to make returns of burials, monthly, to town and city clerks.
7. Clerks to distribute blank forms of returns.
8. Secretary of the commonwealth to furnish clerks with books and blanks, and to prepare and report abstract of returns to the legislature annually.
9. Penalty for neglect by clerks.
10. Clerks to obtain and record information. Registrar may be chosen to perform this duty, in certain cases. Oath.
11. Fees. Compensation may be limited.
12. Penalties for neglect by undertakers, &c. How recovered.
13. Blank forms of returns.
14. Intentions of marriage to be entered with clerk, registrar, &c.
15. Clerk shall deliver to the parties a certificate.
16. Parties going out of the state to be married, shall file a certificate within seven days after their return.
17. Fee.
18. Repeal of so much of R. S, 75, as is inconsistent. Proviso.
19. Certificate of intention not to be issued to males under 21, or females under 18, except on application of parent, master or guardian, it within the state. Penalty.
20. Affidavit of applicant sufficient evidence of age.

ORDINANCE.

1. City clerk to keep a record of births and deaths.
2. Parents and others to give notice of births and deaths.
3. Returns to be made of marriages to city clerk. Penalty for neglect.
4. City marshal shall prosecute violations of this ordinance.

STATUTES.

City clerk to record all births and deaths in the city. R. S. 15, § 46. Ibid, 2, § 6, clause 17.

1. By the provisions of the Revised Statutes, the city clerk[1] was required to keep a record of the births and deaths of all persons within the city, and coming to his knowledge; and to specify in such record the day of each birth and death, and the names of the parents of such persons, if known.

Parents and others, to give no-

2. Parents in the city shall give notice to the city clerk of all the births and deaths of their children; and

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1 See § 10, p. 186, *post*, providing for the choice of a city registrar, to perform the duties herein imposed upon the city clerk,

every householder shall give the like notice of every birth and death happening in his house; and the eldest person next of kin shall give such notice of the death of his kindred; and the keeper of any alms-house, work-house, house of correction, prison or hospital, and the master or other commanding officer of any ship, shall give the like notice of every birth and death, happening among the persons under his charge; and every person neglecting to give such notice, for the space of six months, after the birth or death shall have happened, shall forfeit to the use of the city a sum not exceeding five dollars.

tice to city clerk, of births and deaths. Ibid. R. S. 15, § 47.

3. The clerks of the several cities and towns in this Commonwealth shall, annually, on or before the first day of February, return to the secretary of the Commonwealth copies of the records of the births, marriages, and deaths, which have occurred within their respective cities and towns during the next preceding year ending December thirty-first.

Clerks to transmit to secretary of the commonwealth copies of record of births, marriages and deaths. 1844. 159, § 1. 1849. 202, § 5.

The births shall be numbered and recorded in the order in which they are received by the clerk. The record of births shall state in separate columns the date of the birth, the place of birth, the name of the child, (if it have any,) the sex of the child, name and surname of one or both of the parents, occupation of the father, residence of the parents, and the time when the record was made.

Births, how to be recorded, and with what particulars.

The marriages shall be numbered and recorded in the order in which they are received by the clerk. The record of marriages shall state in separate columns, the date of the marriage, the place of the marriage, the name, residence, and official station of the person by whom married, the names and surnames of the parties, the residence of each, the age of each, the condition of each, (whether single or widowed,) the occupation, names of the parents, and the time when the record was made.

Marriages.

Deaths.

The deaths shall be numbered and recorded in the order in which they are received by the clerk. The record of deaths shall state in separate columns the date of the death, the name and surname of the deceased, the sex, condition, (whether single or married,) age, occupation, place of death, place of birth, names of the parents, disease, or causes of death, and the time when the record was made.

School committees to make annual returns of births, to town and city clerks. 1844, 159, § 2.

4. The school committee of each city or town shall, annually, in the month of May, ascertain from actual inquiry or otherwise, all the births which have happened within such city or town, during the year next preceding the first day of said May, together with the facts concerning births required by the preceding section, and shall make an accurate return thereof to the clerk of such city or town, on or before the last day of said May; and the said school committee, or other person authorized by them to make such returns, shall be entitled to receive from the treasury of such city or town, five cents for each and every birth so returned.

Persons solemnizing marriages, to keep a record thereof, and to make returns monthly, to town and city clerks. Ibid, § 3.

5. Every justice, minister, and clerk, or keeper of the records of the meeting wherein any marriages among the Friends or Quakers shall be solemnized, shall make a record of each marriage solemnized before him, together with all the facts relating to marriages required by the third section; and each such justice, minister, clerk, or keeper, shall, between the first and tenth days of each month, return a copy of the record for the month next preceding, to the clerk of the city or town in which the marriage was solemnized; and every person as aforesaid, who shall neglect to make the returns required by this section, shall, upon conviction thereof, forfeit for each neglect a sum, not less than twenty, nor more than one hundred dollars; one moiety thereof to the use of the county in which he resides, and the other moiety to the use of the person who shall prosecute therefor.

R. S. 76, § 13.

Persons having charge of burial grounds to make returns of burials monthly, to town and city clerks. 1844, 159, § 4.

6. Each sexton, or other person, having the charge of any burial ground in this Commonwealth, shall, on or before the tenth day of each month, make returns of all the facts required by the third section, connected with the death of any person whose burial he may have superintended during the month next preceding, to the clerk of the city or town in which such deceased person resided at the time of his death. And such sexton, or other person, shall be entitled to receive from the treasury of the city or town in which the return is made, five cents for the return of each death made agreeably to the provisions of this act.[1]

Clerks to distribute blank forms of returns. Ibid, § 6.

7. It shall be the duty of the clerks of the several cities and towns, to make such distribution of blank forms of returns as shall be designated by the secretary of the Commonwealth.

Secretary of the commonwealth to furnish clerks with books and blanks, and to prepare and report abstract of returns to the legislature annually. Ibid, § 7.

8. The secretary of the Commonwealth shall prepare and furnish to the clerks of the several cities and towns in this Commonwealth, blank books of suitable quality and size, to be used as books of record, according to the provisions of the five preceding sections, and also blank forms of returns as herein before specified, and shall accompany the same with such instructions and explanations as may be necessary and useful; and he shall receive said returns, and prepare therefrom such tabular results, as will render them of practical utility, and shall make report thereof annually to the legislature, and generally shall do whatever may be required to carry into effect the provisions of this and the five preceding sections.

Penalty for neglect by clerks. Ibid, § 8.

9. Any clerk, who shall neglect to comply with the requirements of the six preceding sections, shall be liable to a penalty of ten dollars, to be recovered for the

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[1] The 5th section of stat. 1844, c. 159, providing for the fees of the clerk, appears to be superseded by subsequent provisions. See § 11, p. 186, *post*.

use of any city or town where such neglect shall be proved to have existed.[1]

Clerks to obtain and record information. 1849, 202, § 1.

10. Town and city clerks are authorized and required to obtain, record, and index, the information concerning births, marriages, and deaths, now required by law. Towns and cities, containing more than ten thousand inhabitants, may choose a person, other than the town or city clerk, to be town or city registrar, to perform this duty, instead of the town or city clerk; and said registrar shall take an oath faithfully to perform the duties of the office.

Registrar may be chosen to perform this duty, in certain cases.

Oath.

Fees Ibid, § 2.

11. The fees of the clerk and registrar, for obtaining, recording, and indexing, the information required by this act, shall be as follows:—For each birth, twenty cents; for each intention of marriage, including the certificate to the parties, fifty cents; for each marriage solemnized, ten cents; for each death, five cents; and the undertaker shall be allowed ten cents for information concerning each death which he returns to the clerk or registrar; said fees for births, deaths, and marriages solemnized, shall be paid by the town; and for intentions of marriage, by the parties having such intentions; *provided however*, that the aggregate compensation, allowed to any clerk or registrar, may be limited by any town or city, containing over ten thousand inhabitants, but in no case so as to prevent the full execution of this and the tenth, twelfth, and thirteenth sections.

Compensation may be limited.

Penalties for neglect by undertakers, &c. Ibid, § 3.

12. Any undertaker, or other person having the superintendence of the burial of any deceased person, who shall neglect or refuse to obtain and return the information required by this act concerning each person deceased, whose burial shall come under his superintendence, shall be liable to a penalty not exceeding twenty

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[1] Stat. 1844, c. 159, § 9, repealed Stat. 1842, c. 95.

dollars for each neglect, and, if an undertaker, to be deprived of his office. And every clerk or registrar, who wilfully neglects or refuses to perform the duties herein prescribed, shall be liable to a penalty of not less than twenty, nor more than one hundred dollars, for each neglect or refusal. All penalties and forfeitures, under this section, may be recovered by any person who shall sue for the same, one half thereof to the use of said complainant, and the other half to the use of the town or city in which the forfeiture shall have been incurred.

How recovered.

13. The blank forms of such returns shall be printed on paper of uniform size; and those for each year, when filled out and returned to the office of the secretary of state, shall be bound together in one or more volumes, and shall be furnished with an index. Blank books for indexes to the town registrars, shall be prepared by the secretary of state, and furnished to the several towns and cities at the expense of the Commonwealth.[1]

Blank forms of returns. Ibid, § 5. See § 3, p. 183 *ante*.

14. All persons intending to be joined in marriage shall cause notice of their intention to be entered before their marriage, in the office of the clerk, registrar, or other officer appointed for such purpose, of the city or town in which they may respectively dwell, (if within the state;) and if there be no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town.

Intentions of marriage to be entered with clerk, registrar, &c. 1850, 121, § 1.

15. The clerk shall deliver to the parties a certificate under his hand, specifying the time when notice of the intention of marriage was entered with him, which certificate shall be delivered to the minister or magistrate, in whose presence the marriage is to be contracted before he shall proceed to solemnize the same.

Clerk shall deliver to the parties a certificate. Ibid, § 2.

16. Whenever parties living in this Commonwealth

Parties going out

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1 Stat. 1849, c. 202, § 6, contained a general repeal of all inconsistent provisions.

of the state to be married, shall file a certificate within seven days after their return. Ibid, § 3.

shall go out of it for the purpose of having a marriage solemnized between them in another state, and a marriage shall be so solemnized, and they shall return to dwell here, they are hereby required to file a certificate or declaration of their marriage, including the facts concerning marriages now required by law, with the clerk or registrar of the town or city where either of them lived at the time, within seven days after their return, under a penalty of ten dollars, to be recovered in the manner and to the uses specified in the third section of the "act relating to the registration of births, marriages, and deaths," passed on the second day of May, in the year eighteen hundred and forty-nine.[1]

Fee Ibid § 4.

17. The fee of the clerk or registrar, for making the record of such marriage, shall be fifty cents, to be paid by the said parties.

Repeal of so much of R. S. 75, as is inconsistent. Ibid. § 5. Proviso.

18. So much of the seventy-fifth chapter of the Revised Statutes as is inconsistent with the four preceding sections, is hereby repealed: *provided, nevertheless*, that nothing herein contained shall be so construed as to modify or alter the provisions of the twenty-second section of the said seventy-fifth chapter, which relates to marriages among the people called Friends or Quakers, but the same shall remain in full force.

Certificate of intention not to be issued to males under 21, or females under 18, except on application of parent, master or guardian, if within the state. Penalty. 1853, 335, § 1.

19. No clerk or registrar of any city or town shall issue any certificate or intention of marriage to any male person under the age of twenty-one years, or to any female person under the age of eighteen years, except it be upon the application of the parent, master, or guardian of such person, or with their consent in writing expressed, under a penalty, not exceeding one hundred dollars, to be recovered by indictment to the use of the Commonwealth, in any court proper to try the same: *provided*, that if there be no parent, master, or guardian in the state, competent to act, a certificate

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[1] § 12, p. 186, *ante*.

may be issued without the application or written consent aforesaid.

20. The clerk or registrar of every city or town may require of any person who shall apply for a certificate of intention of marriage, an affidavit, sworn to before some justice of the peace for the county where such application is made, setting forth his or her age; and, for the purposes of this act, such affidavit shall be proof of the age of the person to whom such a certificate shall be given.

Affidavit of applicant sufficient evidence of age. Ibid § 2.

An Ordinance providing for the registry of births, deaths, and marriages.[1]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. The city clerk shall keep a record of the births and deaths of all persons within the city, and coming to his knowledge; and he shall specify in such record the day of each birth and death, with the name and the sex of each person born, and the names of the parents of such person. He shall also specify the name and the age of each person deceased, and the name of the disease of which such person died, if known.

City clerk to keep a record of births and deaths. Feb. 25, 1839.

SECT. 2. Parents shall give notice to the city clerk of all the births and deaths of their children, with the name or sex of those born, and the day of their birth, and with the age and name of those deceased, together with the name of the disease of which they died; and every householder shall give the like notice of every birth and death, happening in his house; and the old-

Parents and others to give notice.

[1] Passed Feb. 25, 1839.

est person next of kin shall give such notice of the death of his kindred; and the keeper of the alms-house and hospital, and the master or other commanding officer of any vessel, shall give the like notice of every birth or death, happening among the persons under his charge; and every person neglecting to give such notice for the space of six months, after the birth or death shall have happened, shall forfeit to the use of the city a sum not exceeding five dollars.

Return to be made of marriages to city clerk.

SECT. 3 Every justice of the peace, and every minister of the gospel shall make a return to the city clerk in the month of April, annually, of all the marriages solemnized by them within the limits of the city, during the year then last past, together with the names of the persons, so by them joined in marriage, and the day on which said marriage was solemnized. Every justice of the peace, and minister of the gospel, who is about to remove from the city, shall make similar returns of all marriages solemnized by him during such part of the year as he has been a resident in the city. Every justice of the peace and minister who shall neglect to make such returns, shall upon conviction thereof, forfeit for each neglect a sum not exceeding twenty dollars. And the clerk or keeper of the records of the meeting of the society of friends shall also in the month of April annually, make and deliver to the city clerk a certificate like that before prescribed, to be returned by justices and ministers, of all marriages solemnized in the said meetings the year then last past, and for each neglect thereof, shall forfeit a sum not exceeding twenty dollars.

Penalty for neglect.

City marshal shall prosecute violations of this ordinance.

SECT. 4. It shall be the duty of the city marshal to prosecute, after reasonable notice has been given to the party of his intention so to do, all neglects and violations of the provisions of this ordinance.

REWARDS.[1]

STATUTE.

1. Selectmen, or mayor and aldermen may offer a reward not exceeding $200, for securing offenders.
2. Payment, when there is more than one claimant.

1. The selectmen of any town or the mayor and aldermen of any city, are authorized, whenever, in their opinion, the public good may require it, to offer a suitable reward, to be paid by such town or city, not exceeding two hundred dollars in any one case, to any person who shall in consequence of such offer, secure any person charged with any capital crime, or other

Selectmen, or mayor and aldermen, may offer a reward not exceeding $200 for securing offenders. 1840, 75, § 1.

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1 The mayor and aldermen of the city of Boston passed an order, "that a reward of $500 be offered to any person who shall give information, so that any person shall be convicted of setting fire to any building, for the purpose of burning the same;" an advertisement was inserted in the city newspapers which were published on the next morning after said order was passed, reciting that sundry houses and other buildings had been recently set on fire, and offering a reward of $500 to any person "who shall give information, so that any perpetrator of these outrages shall be convicted." This advertisement purported to be "by order of the mayor and aldermen," and was signed by the city clerk. *Held*, that the advertisement must be taken to be the official act of the mayor and aldermen. *Held*, also, that the order and the advertisement were to be construed together, as parts of the same transaction, and that by the true construction thereof, the reward was offered for information that would lead to the conviction of offences previously committed, and not offences thereafter committed. *Freeman v. City of Boston*, (5 Metc, 56.) The mayor of the city of Boston caused an advertisement to be published, for about a week, in the daily papers of the city, stating that there had been a frequent and successful repetition of incendiary attempts, and offering a reward, to be paid by the city, for the apprehension and conviction of any person engaged in those attempts. Held, that this was not to be regarded as an unlimited offer, continuing till it should be formally withdrawn, but as limited to a reasonable time; and that it ceased to be an offer, after the lapse of three years and eight months. *Loring v. City of Boston*, (7 Metc. 409.)

As to the right of city officers to claim rewards offered by the city authorities, see *Pool v. City of Boston*, (5 Cushing, 219.)

high crime or misdemeanor, committed in such town or city, and such reward shall be paid by the treasurer of such town or city, upon the warrant of the selectmen or mayor and aldermen.

Payment when there is more than one claimant. Ibid, § 2.

2. When more than one claimant shall appear and apply for the payment of such reward, the selectmen or mayor and aldermen shall determine to whom the same shall be paid, and if to more than one person, in what proportion to each, and their determination shall be final and conclusive in law upon all persons whatsoever.

SCHOOLS.

STATUTES.

1. What schools shall be provided by every town.
2. What by towns of 100 families.
3. What by towns of 150 families.
4. What by towns of 500 families.
5. Additional school in towns of 500 families, except, &c. In towns of 4,000 inhabitants.
6. Towns within the 5th section, but containing less than 8,000 inhabitants, exempted from its requirements, on certain conditions.
7. Towns of less than 500 families may maintain such school as mentioned in § 5.
8. Duty of instructors.
9. Duty of ministers and town officers.
10. Towns may raise money for schools.
11. School committee of Salem. Mayor and president of common council to be members.
12. School committee to examine into the qualifications of instructors.
13. Instructors not to be paid, unless the committee certify, &c.
14. Committee to decide on admission of scholars into school kept for the whole town.
15. Committee to visit all the district schools.
16. Authority of committee as to school books.
17. Parents, &c., to supply the books prescribed.
18. Books may be provided by the school committee.
19. Books to be furnished at expense of town, in case, &c.
20. Expense of books so supplied, to be taxed to parents, &c.
21. If parents are unable to pay, such tax may be wholly or partially omitted.
22. Books not to be bought which

favor any particular sect of christians.
23. Committee to select teachers.
24. Committee to keep records, &c.
25. Committee empowered to dismiss teachers.
26. Proceeds of Maine land and militia claim, appropriated to school fund.
27. Investment of school fund.
28. Committees to make returns to secretary.
29. School committee to ascertain and report, annually, the number of persons between 5 and 15 years of age in their city or town. Form of certificate.
30. Board of education shall provide form of blanks and inquiries, for school returns. Secretary to forward the same. School committee to return the same, duly filled up, to the secretary of the commonwealth.
31. School committee to make, annually, a detailed report of the condition of the public schools. To be deposited with clerk, and read in town meeting, &c.
32. The income of school fund, except, &c., to be apportioned according to number of persons between 5 and 15. Proviso.
33. Committee shall state, in their returns, the amount received from the school fund.
34. Secretary of board of education to transmit forms, &c.
35. Clerks of cities and towns to distribute the same.
36. Abstracts of school returns to be made up by board of education.
37. Compensation of school committee.
38 City or town may withhold compensation of school committee who fail to make returns.
39. Where school committees become reduced in number, the remaining members empowered to make returns.
40. Vacancies in school committees. How filled.
41. Registers to be provided and transmitted to school committees. To be faithfully kept, according to form prescribed.
42. Board of education to prescribe form of school registers. No teacher entitled to pay, until the register of the school is completed.
43. Provisions of R. S. c. 23, not to affect funds, &c., of corporations for supporting schools.
44. Forfeiture, if towns neglect to raise money for schools, and how appropriated.
45. School committee, &c, to receive and appropriate sums forfeited.
46. Any city or town may appropriate further sums of money for instructing adults in reading, &c.
47. Such sums to be assessed, &c. in the same manner as taxes.
48. School districts, &c., may raise money for the purchase of libraries, &c.
49. Physiology and hygiene to be taught in the schools.
50. Teachers to be examined in those branches.
51. When to take effect.
52. Punishment for disturbing school, &c.
53. Remedy for the unlawful exclusion of a child from public school instruction.
54. Persons having control of children, between 8 and 14 years, to send them to school twelve weeks in each year.
55. Penalty.
56. School committee to inquire into such cases and report thereon.
57. What shall not be deemed sufficient excuse for not sending children to school.

What schools shall be provided by every town. 1839, 56, § 1.

1. In every town[1] in this Commonwealth, there shall be kept, in each year, at the charge of the town, by a teacher or teachers of competent ability and good morals, one school for the instruction of children in orthography, reading, writing, English grammar, geography, arithmetic, and good behavior, for the term of six months, or two or more such schools for terms of time which shall together be equivalent to six months; and in every school in this Commonwealth containing fifty scholars as the average number, the school district or town to which such school belongs shall be required to employ a female assistant or assistants, unless such school district or town shall, at a meeting regularly called for that purpose, vote to dispense with the same.

What by towns of 100 families. R. S. 23, § 2.

2. In every town, containing one hundred families or householders, there shall be kept in each year one such school,[2] for the term of twelve months, or two or more such schools, for terms of time, that shall together be equivalent to twelve months.

What by towns of 150 families. Ibid, § 3.

3. In every town, containing one hundred and fifty families or householders, there shall be kept in each year two such schools, for nine months each, or three or more such schools, for terms of time, that shall together be equivalent to eighteen months.

What by towns of 500 families. Ibid, § 4.

4. In every town, containing five hundred families or householders, there shall be kept in each year two such schools for twelve months each, or three or more such schools, for terms of time, that shall together be equivalent to twenty-four months.

Additional school in towns of 500 families, except, &c. Ibid, § 5.

5. Every town, containing five hundred families or householders, shall, besides the schools prescribed in

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1 The word "town" may be construed to include "cities," &c. Rev. Stat. c. 5, § 6, clause 17.

2 The word "such" in this section refers to the first part of § 1, ending with the words "equivalent to six months," which follows the language of Rev. Stat. c. 23, § 1. The remainder of § 1, was first enacted in 1839.

the preceding section, maintain a school, to be kept by a master of competent ability and good morals, who shall, in addition to the branches of learning before mentioned, give instruction in the history of the United States, book-keeping, surveying, geometry and algebra; and such last mentioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places in the town, as the said inhabitants at their annual meeting shall determine; and in every town containing four thousand inhabitants, the said master shall, in addition to all the branches of instruction, before required in this chapter, be competent to instruct in the Latin and Greek languages, and general history, rhetoric and logic.[1]

In towns of 4000 inhabitants.

6. Towns coming within the requirements of the preceding section, but of less than eight thousand inhabitants by the next preceding decennial census, may be exempt from said requirements: *provided*, that they maintain, in each year, two or more schools, in such districts as the school committee shall approve, for terms of time that shall, together, be equivalent to twelve months, and for the benefit of all the inhabitants, kept by masters who, in addition to the branches of instruction enumerated in the first section of said chapter, shall be competent to give instruction in the history of the United States, book-keeping, surveying, geometry, and algebra, and also, in towns containing four thousand inhabitants, in the Latin and Greek languages, general history, rhetoric and logic: *provided, also*, that no one of said schools shall be kept for a less term than three[1] months.

Towns within the 5th section, but containing less than 8000 inhabitants, exempted from its requirements, on certain conditions. 1850, 274.

7. Any town, containing less than five hundred fam- Towns of less

1 The two last mentioned schools must be kept for the benefit of the whole town or city. *Commonwealth v. Dedham.* (16 Mass. 141.)

than 500 families may maintain such schools as mentioned in § 5, R. S. 23, § 6.

ilies or householders, may establish and maintain such a school as is first mentioned in the fifth section, for such term of time, in any year, or in each year, as they shall deem expedient.

Duty of instructors. R. S. 23, § 7. See also Constitution, c. 5, § 2.

8. It shall be the duty of the president, professors, and tutors of the university at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and all other instructors of youth, to exert their best endeavors, to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other virtues, which are the ornament of human society, and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.

Duty of ministers and town officers. R. S. 23, § 8.

9. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, in the several towns, to exert their influence, and use their best endeavors, that the youth of their towns shall regularly attend the schools established for their instruction.

Towns may raise money for schools. Ibid, § 9.

10. The several towns are authorized and directed, at their annual meetings, or at any regular meeting called for the purpose, to raise such sums of money, for the support of the schools aforesaid, as they shall judge necessary;[1] which sums shall be assessed and

1 Towns have power to vote and grant money for the support of

collected in like manner as other town taxes.[1]

School committee of Salem, how chosen. City charter § 8, 1830, c 127. Mayor and president of common council to be members. City charter § 9.

11. The statute of 1830, c. 127, provided that the town of Salem might elect such a number of persons to perform the duties of school committee as the town at its annual meeting for the choice of officers should determine; and by section eighth of the city charter, the city council shall annually, as soon after their organization as may be convenient, elect by joint ballot, in convention, a school committee. By § 9 of the city charter the mayor and president of the common council shall be ex-officio members of the school committee.

School committee to examine into the qualifications of instructors. R. S. 23, § 13.

12. The school committee shall require full and satisfactory evidence of the good moral character of all instructors, who may be employed in the public schools in their town, and shall ascertain, by personal examination, their literary qualifications and capacity for the government of schools.

Instructors not to be paid unless the committee certify, &c. Ibid, § 14. But see 1850, 115.

13. Every instructor of a town or district school shall obtain of the school committee of such town, a certificate in duplicate, of his qualifications, before he opens such school, one of which shall be filed with the town treasurer, before any payment is made to such instructor on account of his services.[2]

Committee to decide on admission of scholars into schools kept for the whole town. R. S. 23, § 15.

14. The school committee shall determine the number and qualifications of the scholars, to be admitted into the school, kept for the use of the whole town, as aforesaid, and visit such school, at least quarter yearly, for the purpose of making a careful examination thereof, and of ascertaining that the scholars are properly supplied with books; and they shall, at such examination,

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other schools and for instruction in other branches than those which the R. S. require. *Cushing vs. inhabitants of Newburyport*, (10 Metc. 508.)

1 See also § 44, p. *post*.

2 See *Commonwealth vs. Dedham* (16 Mass. 141.) *Cushing vs. Newburyport* (10 Metc. 508.)

inquire into the regulation and discipline of the school, and the habits and proficiency of the scholars therein.

Committee to visit all the district schools. Ibid, § 16.

15. The school committee, or some one or more of them, shall, for the purposes aforesaid, visit each of the district schools in their town, on some day during the first or second week after the opening of such schools, respectively, and also on some day during the two weeks preceding the closing of the same; and shall also, for the same purposes, visit all the schools kept by the town, once a month, without giving previous notice thereof to the instructors.

Authority of committee as to school books. Ibid, § 17.

16. The school committee of each town shall direct what books shall be used in the several schools kept by the town; and may direct what books shall be used in the respective classes.

Parents, &c., to supply the books prescribed. Ibid, § 18.

17. The scholars at the town schools shall be supplied by their parents, master or guardians, with the books prescribed for their classes.

Books may be provided by the school committee. R. S 23, § 19. 13 Pick. 229.

18. The school committee of each town may procure, at the expense of the town, or otherwise, a sufficient supply of such class books, for all the schools aforesaid, and shall give notice of the place, where such books may be obtained; and the books shall be supplied to the scholars, at such prices, as merely to reimburse the expense of the same.

Books to be furnished at expense of the town, in case, &c. R. S. § 23, § 20.

19. In case any scholar shall not be furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee, at the expense of the town.

Expense of books so supplied, to be taxed to parents, &c. R S. 23, § 21.

20. The school committee shall give notice, in writing, to the assessors of the town, of the names of the scholars so supplied by them with books, and of the books so furnished, the prices thereof, and the names of the parents, masters or guardians, who ought to have supplied the same; and said assessors shall add the price of the books so supplied, to the next annual tax of such parents, masters or guardians; and the amount

so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

If parents are unable to pay, such tax may be wholly or partially omitted. Ibid, § 22.

21. In case the assessors shall be of opinion, that any such parent, master or guardian is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to the annual tax of such parent, master or guardian, according to their opinion of his ability to pay.

Books not to be bought which favor any particular sect of christians. Ibid, § 23.

22. The school committee shall never direct to be purchased or used, in any of the town schools, any school books, which are calculated to favor the tenets of any particular sect of christians.

Committee to select teachers. 1838, 105, § 2.

23. The school committees shall select and contract with the teachers for the town and district schools.[1]

Committee to keep records, &c. Ibid, § 3.

24. The school committee in each town shall be provided with a record book, in which all votes, orders and proceedings of the committee shall be duly recorded, and said record shall be delivered over by the committees, at the expiration of the year, to their successors in office.

Committee empowered to dismiss teachers. 1844, c. 82.

25. The school committee of any town is authorized to dismiss from employment any teacher in such town, whenever the said committee may think proper, and from the time of such dismissal such teacher shall receive no further compensation for services rendered in that capacity.

Proceeds of Maine lands and militia claim, appropriated to school fund. R. S. 11, § 13.

26. All moneys and stocks in the treasury, on the first day of January, in the year one thousand eight hundred and thirty-five, which shall have been derived from sales of the Commonwealth's land in the state of

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1 See the whole section, 1838, c. 105, § 2. The power conferred on school committees by Stat. 1838, c. 105, § 2, "to select and contract with the teachers for the town and district schools" includes the power to fix, the compensation to be paid them, and to bind the town to pay the same. *Batchelder v. City of Salem*, (4 Cushing 599.) As to the right of school committee to establish separate schools for colored children. See *Roberts vs. Boston*, (5 Cushing 198.)

Maine, and from the claim of the Commonwealth on the government of the United States for military services, and which shall not be otherwise appropriated, together with one half of the moneys thereafter received from the sale of lands in Maine, shall constitute a permanent fund, to be called the Massachusetts school fund, for the encouragement of common schools, according to the provisions of the twenty-fourth chapter of the Revised Statutes[1]; *provided*, that said fund shall never exceed one million five hundred thousand dollars.

1851, c. 112.

Investment of school fund. R. S. 11, § 14.

27. The investment of all moneys, appropriated to the said school fund, shall be made by the treasurer of the Commonwealth, with the approbation of the governor and council.[2]

Committees to make returns to secretary. Ibid, § 62.

28. The school committees of the several towns shall, on or before the first day of November, in each year, make official returns, to the secretary of the Commonwealth, of all the public schools in such towns, respectively, whether such schools are kept for school districts, or for the common benefit of all the inhabitants.

School committee to ascertain and report annually, the number of persons between 5 and 15 years of age in their city or town. 1846, 223, § 2. 1849, 117, § 1.

29. The school committee of each city and town shall, as soon as may be after the first day of May, annually, ascertain by actual examination or otherwise, the number of persons between the ages of five and fifteen years belonging to such city or town, on the said first day of May, and shall make a certificate thereof, under oath, and also of the sum raised by such city or town for the support of schools, including only wages and board of teachers, and fuel for the schools, during the said year; and shall transmit the same to the secretary of the Commonwealth, on or before the last day of the following April, which certificate shall be in the following form to wit:

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1 There appears to be an error in the Revised Statutes in this reference; c. 23 should have been referred to.

2 See also stat. 1838, c. 154; and 1846, 219, § 2.

We the school committee of ———, do certify, from the best information we have been able to obtain, that, on the first day of May, in the year ———, there were belonging to the said town the number of ——— persons, between the ages of five and fifteen years; and we further certify, that said town raised the sum of ——— dollars for the support of common schools for the said year, including only the wages and board of teachers, and fuel for the schools. Form of certificate.

——— ———, }
——— ———, } School Committee.
——— ———, }

——— ss. On this ——— day of ———, personally appeared the abovenamed school committee of ———, and made oath that the above certificate by them subscribed is true.

Before me,

——— ———, Justice of the Peace.

30. The form of the blanks, and the inquiries provided for by the statute of the year one thousand eight hundred and thirty-seven, chapter two hundred and twenty-seven,[1] shall be prescribed by the board of education; and it shall be the duty of said board, in the month of January, annually, to transmit to the secretary of the Commonwealth, copies of said blanks for the Board of education shall prescribe form of blanks and inquiries, for school returns. 1846, 223, § 3.

1 The Revised Statutes, c. 23, § § 63, 64, prescribed a form of blanks and inquiries for school returns. The statute of 1837, c. 227, referred to in the text, prescribed a different form, and repealed those sections of the Revised Statutes, but provided that all reference to those sections, contained in other sections of c. 23, should be considered as applying to the act of 1837. By stat. 1838, c. 105, § 5, the form of the blanks and inquiries, and the time of returning them, was left to be prescribed by the board of education. By stat. 1841, c. 17, § 4, the provision giving the board authority to prescribe the time, was repealed. By stat. 1846, c. 223, § 3, the provision giving the board authority to prescribe the form of blanks and inquiries was re-enacted, as given in the text.

Secretary to forward the same.

several cities and towns. It shall be the duty of said secretary to cause said blanks to be forwarded to the sheriffs of the several counties, who shall transmit them as soon as may be to the clerks of the several cities and towns within their counties respectively, and said clerks shall forthwith transmit the same to the school committees. The school committees of the several cities and towns, shall return said blanks duly filled up, to the office of the secretary of the Commonwealth, on or before the last day of April. If any school committee shall fail to receive such blank form of return on or before the last day of March, they shall forthwith give notice thereof, to the secretary of the Commonwealth, who shall transmit such blank as soon as may be.

School committee to return the same, duly filled up, to secretary of commonwealth

School committee to make annually a detailed report of the condition of the public schools. Ibid, § 4.

31. The school committees shall annually make a detailed report of the condition of the several public schools in their respective cities and towns, which report shall contain such statements and suggestions in relation to such schools as the said committee shall deem necessary or proper to promote the interests thereof; and a certified copy of such report shall be transmitted by said committees to the office of the secretary of the Commonwealth, on or before the last day of April. Said report shall also be deposited in the office of the clerk of the city or town; and shall either be read in open town meeting, in the month of February, March or April, or at the discretion of the school committee, shall be printed for the use of the inhabitants.[1]

To be deposited with clerk, and read in town meeting, &c.

The income of the school fund, except, &c., to be apportioned according to number of persons between 5 and 15. Ibid, § 5. 1849, 117, § 2.

32. The income of the Massachusetts school fund, to the first day of June in each year, except the sum of two hundred and forty dollars appropriated to the support of schools among the Indians, shall be apportioned by the secretary and treasurer of the Commonwealth, and paid over by the said treasurer on the tenth day of July to the treasurer of the several cities and towns,

[1] This section appears to supersede stat. 1838, § 1.

for the use of the common schools therein, according to the number of persons therein, between the ages of five and fifteen years, ascertained and certified as provided in the twenty-ninth section. Provided, however, that no such apportionment shall be made to any city or town which shall have failed to comply with any of the provisions of this act, or which shall not have raised by taxation, for the support of schools, including only wages, and board of teachers, and fuel for the schools, during the said year, a sum equal at least to one dollar and fifty cents for each person between the ages of five and fifteen years, belonging to said city or town, on the first day of May of said year.[1]

Ibid, § 1.

Proviso, 1846, 223, § 5.

1849, 117, § 3.

33. In addition to the returns required of school committees, by the twenty-third chapter of the Revised Statutes,[2] such committees shall hereafter be required to state the sum or sums of money received from the school fund, by their several towns and cities respectively; and also to specify the purposes to which such sums may have been appropriated.

Committees shall state, in their returns, the amount received from the school fund. 1850, c. 179.

34. It shall be the duty of the secretary of the board of education to send the blank forms of inquiry, the school registers, the abstract of school returns, and the annual report of the board of education, and that of its secretary, to the clerks of the several towns and cities of the Commonwealth, as soon as may be after they are ready for distribution.

Secretary of board of education to transmit forms, &c. 1850, 41.

35. It shall be the duty of the clerk of each of the several cities or towns to deliver the blank forms of inquiry, and the registers, when the same shall be received by him, to the school committee; it shall also be his duty to deliver one copy of the said abstract and

Clerks of cities and towns to distribute the same. 1849, 65 § 2.

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1 By 1849, c. 117, § 4, nothing in the said act is to be considered as prohibiting the attendance upon the schools, of scholars under five or over fifteen years of age.

2 See § 28, p. 200, *ante*, and note to § 30, p. 201, *ante*.

reports to the secretary of the school committee of the city or town, to be by him carefully kept for the use of the said committee, and handed over to his successor in office; and also two additional copies of said reports, for the use of said committee; and further, it shall be the duty of the clerks of the several cities or towns to deliver one copy of the said reports to the clerk of each of the school districts in the respective cities or towns, to be by him deposited in the district school library, if there be one; and, if not, to be by him carefully kept for the use of the prudential committee, the teachers, and the inhabitants of the district, during his continuance in office, and then to be handed over to his successor; and, in case the city or town shall not be districted, the said reports shall be delivered to the school committee, and so placed by them that they shall be accessible to the several teachers, and to the citizens; and they shall be deemed to be the property of the town or city, and not of any officer, teacher or citizen therof.

Abstracts of school returns to be made up by board of education. 1847, 183, § 1.

36. The abstracts of school returns, prescribed by the statute of eighteen hundred and thirty-seven, chapter two hundred and forty-one,[1] shall hereafter be made up by the secretary of the board of education.

Compensation of school committee, 1838, 105 § 4.

37. The members of the school committees, except in the city of Boston, shall be paid by their respective towns, one dollar each per day for the time they shall be actually employed in discharging the duties of their office, together with such additional compensation as the town may allow.

City or town may withhold compensation of school committee, who fail to make returns. 1847, 183, § 2.

38. Any city or town may withhold such compensation as the school committee of such city or town are now authorized, by law, to receive, if such town shall

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1 Stat. 1837, c. 241, § 2, here referred to, provided, that the board of education should prepare and lay before the legislature, in a printed form, on or before the second Wednesday of January, annually, an abstract of the school returns received by the secretary of the Commonwealth.

have forfeited its due portion of the income of the school fund through the failure of such committee to comply with the provisions of the law in relation to school returns, or to comply with the provisions of the thirty-first section. 1848, c. 173.

Where school committees become reduced in number, the remaining members empowered to make returns. 1849, c. 144.

39. Whenever, in consequence of vacancies occurring in the school committee of any city or town in this Commonwealth, after the date of the warrant for the annual town meeting for the election of their successors, or the inability, arising after said date, of any of the members of said committee to act, such committee shall be reduced to a minority of its original number, the remaining members of said committee shall be competent to make the returns required to be made and transmitted to the office of the secretary of the Commonwealth; and such returns shall be accompanied by a certificate of the person or persons so making them, setting forth the existence of such vacancies or disabilities, and the time when the same arose.

Vacancies in school committee how filled. 1851, c. 309.

40. Whenever vacancies occur in the school committee of any town or city in this Commonwealth, or when, from any cause, any member or members are unable to act, the remaining member or members of said committee, together with the selectmen of said town, or the mayor and aldermen of said city, shall have power to fill vacancies in said committee; and the school return, signed by a majority of the committee thus constituted, shall be equally valid as if signed by a majority of the committee as originally chosen.

Registers to be provided, and transmitted to school committees. 1838, 105 § 6.

41. The board of education shall prescribe a blank form of a register, to be kept in all the town and district schools in the Commonwealth; and the secretary of state shall forward a sufficient number of copies of the same to the school committees of the respective towns; and said committtees shall cause registers to be faithfully kept in all said schools, according to the form prescribed.

To be faithfully kept, according to form prescribed.

Board of education to prescribe form of school registers. 1849, 209, § 1.

42. Instead of the school registers, in book form, now transmitted to school committees, the secretary of the board of education is hereby required to transmit registers in such form as the said board shall prescribe; and no school teacher shall be entitled to receive payment for his or her services, until the register of his or her school, properly filled up and completed, shall be deposited with the school committee, or with such person as they may designate to receive it.

No teacher entitled to pay, until the register of the school is completed, &c.

Provisions of R. S. c. 23, not to affect funds, &c., of corporations for supporting schools. R. S. 23, § 59.

43. Nothing contained in the twenty-third chapter of the Revised Statutes shall affect the right of any corporation, which is or may be established in any town, to manage any estate or funds, given or obtained for the purpose of supporting schools therein, or, in any wise, to affect any such estate or funds, but such corporate powers and such estate and funds shall remain, as if the provisions in said chapter had not been enacted.

Forfeiture if towns neglect to raise money for schools; and how appropriated. Ibid. § 60.

44. If any towns shall refuse or neglect to raise money for the support of schools, as required by the twenty-third chapter of the Revised Statutes, such town shall forfeit a sum, equal to twice the highest sum, which had ever before been voted for the support of schools therein; and, if any town shall refuse or neglect to choose a school committee to superintend said schools, or to choose, for the purposes before mentioned in the said chapter, prudential committees in their several districts, when it is the duty of the town to choose such prudential committee, such town shall forfeit a sum not less than one hundred nor more than two hundred dollars, which shall be paid into the treasury of the county; and one-fourth thereof shall be for the use of the county, and three-fourths thereof shall be paid by the county treasurer to the school committee of such town, if any, and if not, to the selectmen of the town, for the support of schools therein.

School committee, &c, to receive and appro-

45. Every such school committee, or board of selectmen, shall forthwith receive, from the treasurer of the

county, any money so payable to them, and shall apportion and appropriate the same, to the support of the schools of such town, in the same manner it should have been appropriated, if it had been regularly raised by the town for that purpose.

priate sums forfeited. Ibid, § 61.

46. In addition to the grants of money for common schools which cities and towns are now, by law, authorized to make, any city or town may appropriate such further sums of money as it may deem expedient, for the support of schools for the instruction of adults in reading, writing, English grammar, arithmetic, and geography.

Any city or town may appropriate further sums of money for instructing adults in reading, &c. 1847, 137, § 1.

47. Such moneys shall be assessed, levied, collected, and paid into the treasury, in the same manner that other town or city taxes are, and shall then be at the disposal of the school committee of the town or city, to be expended by them, for the purpose aforesaid, in such manner as they may deem expedient.

Such moneys to be assessed, &c., in the same manner as taxes. Ibid, § 2.

48. The inhabitants of any school district, in any city or town, and of any city or town not divided into school districts, in this Commonwealth, may, at any meeting called for that purpose, raise money for the purchase of libraries, and necessary school apparatus, in the same manner as school districts may now raise money for erecting and repairing school houses in their respective districts.

School districts &c., may raise money for the purchase of libraries, &c. 1849, c. 81, § 1.

49. Physiology and hygiene shall hereafter be taught in all the public schools of this Commonwealth, in all cases in which the school committee shall deem it expedient.

Physiology and hygiene to be taught in the schools. 1850, 229, § 1.

50. All school teachers shall hereafter be examined in their knowledge of the elementary principles of physiology and hygiene, and their ability to give instructions in the same.

Teachers to be examined in those branches. Ibid, § 2.

51. The two preceding sections shall take effect on and after the first day of October, one thousand eight hundred and fifty-one.

When to take effect. Ibid, § 3.

Punishment for disturbing school, &c. 1849, c. 59.

52. Every person who shall wilfully interrupt or disturb any school or other assembly of people, met for a lawful purpose, within the place of such meeting, or out of it, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars.[1]

Remedy for the unlawful exclusion of a child from public school instruction. 1845, c. 214. Roberts v. Boston, (5 Cushing 198)

53. Any child, unlawfully excluded from public school instruction, in this Commonwealth, shall recover damages therefor, in an action on the case[2], to be brought in the name of said child, by his guardian or next friend, in any court of competent jurisdiction to try the same, against the city or town by which such public school instruction is supported.

Persons having control of children between eight and fourteen years, to send them to school twelve weeks in each year. 1852, c. 240 § 1

54. Every person who shall have any child under his control between the ages of eight and fourteen years, shall send such child to some public school within the town or city in which he resides, during at least twelve weeks, if the public schools within such town or city shall be so long kept, in each and every year during which such child shall be under his control, six weeks of which shall be consecutive.

Penalty. Ibid, § 2.

55. Every person who shall violate the provisions of the first section of this act[4] shall forfeit, to the use of such town or city, a sum not exceeding twenty dollars, to be recovered by complaint or indictment.[3]

Duty of school committee to inquire into such cases and report thereon. Ibid § 3.

56. It shall be the duty of the school committee in the several towns or cities to inquire into all cases of violation of the first section of this act,[4] and to ascertain

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1 See act of 1852, c. 212, § 1.

2 The act of 1852, c. 222, gives to the police court of the city of Salem, jurisdiction concurrent with the court of common pleas, of the offence specified in the act of 1849, c. 59, when said offence is not of an aggravated nature; *provided, however*, that the police court shall punish such offence by imprisonment in the county jail or house of correction not more than thirty days, or by fine not exceeding ten dollars, saving to the party convicted the right of appeal as in other cases.

3 Section 5, of act of 1851, c. 240, makes it the duty of the treasurer of the town or city to prosecute all violations of said act.

4 Act of 1852, c. 240, § 54, *ante*.

of the persons violating the same, the reasons, if any, for such violation, and they shall report such cases, together with such reasons, if any, to the town or city, in their annual report; but they shall not report any cases such as are provided for by the fourth section of this act.

What shall not be deemed sufficient excuse for not sending children to school. Ibid, § 4.

57. If, upon inquiry by the school committee, it shall appear, or if, upon the trial of any complaint or indictment under this act, it shall appear that such child has attended some school not in the town or city in which he resides, for the time required by this act, or has been otherwise furnished with the means of education for a like period of time, or has already acquired those branches of learning which are taught in common schools; or if it shall appear that his bodily or mental condition has been such as to prevent his attendance at school, or his acquisition of learning for such a period of time, or that the person having the control of such child is not able, by reason of poverty, to send such child to school, or to furnish him with the means of education, then such person shall be held not to have violated the provisions of this act.[1]

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1 For other and general laws respecting schools, see R. S. c. 15, § 33; c. 23; c. 94, § 54; c. 97, § 22; 1836, c. 245; 1837, c. 147, 227, 241; 1838, c. 55, 105, 154, 159, 189; 1839, c. 56, 137; 1840, c. 7, 76; 1841, c. 17; 1842, c. 42, 60; 1843, c. 85: 1844, c. 6, 32; 1845, c. 100, 157, 214; 1846, c. 99, 219; 1848, c. 10, 237, 274, 279, 283; 1849, c. 62, 81, 206, 215, 220; 1850, c. 115, 179, 213, 286, 294, 301; 1851, c. 112, 186; 1852, c. 222, 240; 1853, c. 149, 347; some of which are, in whole or in part, repealed. For laws respecting state scholarships see 1853, c. 193. See also Truants.

SEAL OF THE CITY.

ORDINANCES.
1. City seal established.
[2.] Seal to be affixed to all conveyances, &c.

An Ordinance to establish the city seal.[1]

Be it ordained by the city council of the city of Salem, as follows :

That the following be the device of the seal of said city, to wit:

City seal established. March 11, 1839.

1. In the centre thereof, a shield, bearing upon it a ship under full sail, approaching a coast designated by the costume of the person standing upon it, and by the trees near him, as a portion of the East Indies. Beneath the shield this motto, "*Divitis Indiæ usque ad ultimum, sinum*,"—(signifying to the farthest part of the rich East:)—and above the shield, a dove bearing an olive branch in her mouth. In the circumference encircling the shield the words "*Salem condita* 1626." (Salem founded 1626)—*Civitatis regimine donata* 1836." (Incorporated as a city 1836.)

[1] Passed March 11, 1839.

An Ordinance prescribing the use of the city seal.[1]

Be it ordained by the city council of the city of Salem, as follows:

[2.] The seal of the city as established by an ordinance entitled "an ordinance to establish the city seal," passed March 11, 1839, shall hereafter be affixed to all conveyances by the city of real estate, and to all instruments requiring a seal.

Seal to be affixed to all conveyances, &c. Oct. 27, 1851.

SECOND HAND ARTICLES.

STATUTE.

1. Licenses may be granted to deal in old and second hand articles.
2. Place of dealing to be designated. Conditions and terms of license.
3. Penalty for dealing in such articles without license, or at places not designated, &c.
4. City council may suspend this act. Act not to take effect in towns, unless adopted in town meeting.

ORDINANCE.

1. Licenses to contain conditions. Fee for license. Keeper of licensed shop shall keep a book, &c. Shall have a sign designating that he is licensed. Shops to be kept open at certain hours only. Keeper shall not deal with minor or apprentice. Keeper shall notify marshal, &c., if he has reason to believe articles offered were stolen.
2. Licenses to be in force one year from their date.
3. Penalty.

STATUTE.

1. The mayor and aldermen of any city, and the selectmen of any town, may license such persons as they deem suitable to be keepers of shops for the purchase, sale, or barter of junk, old metals, or of any second hand articles, and to be dealers therein.

Licenses may be granted to deal in old and second hand articles. 1839, 53, § 1.

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[1] Passed October 27, 1851.

Place of business to be designated. Conditions and terms of license. Ibid, § 2.

2. The licenses to such persons shall designate the place where the business is to be carried on, and contain such conditions and restrictions as may be prescribed by the ordinances and by-laws of the city or town wherein the same are granted, and shall continue in force for one year unless sooner revoked.

Penalty for dealing in such articles without license, or at places not designated, &c. Ibid, § 3.

3. No person, unless licensed as aforesaid, shall keep any shop for the purchase, sale or barter of the articles aforesaid, or be a dealer therein; nor shall any person so licensed, keep such shop, or be a dealer in said articles in any other place or manner than as is designated in his license, or after notice to him that said license has been revoked, under the penalty of a sum not exceeding twenty dollars for every offence, to be recovered by complaint in any police court, or by indictment in any court of record in the county where such offence may be committed.

City council may suspend this act. Ibid, § 4.

4. The city council of any city may suspend or dispense with the provisions of this and the three preceding sections, so far as the same apply to each city, *provided*, that no offence committed and no penalty incurred before such suspension shall take effect, shall be affected thereby; and the provisions of the said sections shall not extend to any town unless the inhabitants thereof shall, at a legal meeting, adopt the same.

Act not to take effect in towns, unless adopted in town meeting.

An Ordinance concerning junk shops and dealers in second-hand articles.

Be it ordained by the city council of the city of Salem, as follows:

Licenses to contain conditions. May 9, 1853.

SECT. 1. All licenses which shall be granted by the mayor and aldermen of the city, to any persons to be

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[1] Passed May 9. 1853.

keepers of shops for the purchase, sale or barter of junk, old metals, or any second hand articles, and to the dealers therein, shall contain the following conditions and restrictions and limitations:

Fee for license.

First—That every person, at the time of receiving said license, which shall be granted only on a written petition signed by the party applying for such license, shall pay therefor the sum of one dollar.

Keeper of licensed shop shall keep a book, &c.

Second—That every keeper of such shop shall keep a book in which shall be written, at the time of every purchase, a description of the article or articles purchased, the name and residence of the person from whom, and the day and hour when, such purchase was made; and that such book shall at all times be open to the inspection of the said mayor and aldermen, or of any person by them authorized.

Shall have sign designating that he is licensed.

Third—That every keeper of such shop shall have in some suitable and conspicuous place a sign designating that he is licensed as such, and containing his name.

Shops to be kept open at certain hours only.

Fourth—That the said shops shall not be kept open, except at such hours as shall be specially allowed by the terms of the license; and that no purchases of any of the articles aforesaid, shall be made by the keepers thereof or by any person for them, except during such hours as shall be designated in the license. And that the said shops shall at all times be open to the inspection of the said mayor and aldermen, or of any person by them authorized.

Keeper shall not deal with minor or apprentice.

Fifth—That no keeper of such shop shall, directly, or indirectly, either purchase, or receive by way of barter or exchange, any of the articles aforesaid of any minor or apprentice, knowing or having reason and cause to believe him to be such.

Keeper shall notify marshal, &c., if he have reason

Sixth—That it shall be the duty of every keeper of such shops, if he shall have reason to believe that any article or articles offered to him in the way of barter,

to believe articles offered were stolen.

exchange or sale, were stolen or otherwise illegally or fraudulently obtained or procured by the person thus offering them, to give immediate notice thereof to the city marshal or one of his assistants, or some officer of police.

Licenses to be in force one year from their date.

SECT. 2. All licenses granted under this ordinance shall continue and be in force, for one year, from their date, unless sooner revoked by the mayor and aldermen.

Penalty.

SECT. 3. Any person or persons having obtained a license under the provisions of this ordinance, who shall violate any of the conditions thereof, shall, upon conviction thereof, pay a fine of not less than one, nor more than twenty dollars, to be recovered by complaints before the justice of the police court.

SEWERS.

STATUTE.	ORDINANCE.
1. Power of the city to construct drains and sewers.	1. Common sewers and drains to be laid and kept in repair by commissioners of streets.
2. Mayor and aldermen, &c., may lay, &c., main drains and common sewers.	2. Expense to be kept account of and reported to mayor and aldermen.
3. Persons entering particular drains into common sewers, &c., shall pay a proportional part of the expense.	3. Expense to be assessed on persons entering common drains and on those benefited. Treasurer shall collect assessments.
4. Assessments to be a lien, for one year, on real estate. Estate may be sold for payment.	4. Mayor and aldermen may cause owners of land to make drains. Shall make same at owners expense in case they neglect.
5. Any person aggrieved by assessment may appeal to C. C. Pleas, &c.	5. Drains entering common sewers to be built as mayor and aldermen shall direct. Penalty for entering drains without permit.
6. City, &c., may pay a part of expense.	

STATUTE.

1. The city council shall have authority to cause drains and common sewers to be laid down through any streets or private lands paying the owners thereof such damages as they may sustain thereby, and to require all persons to pay a reasonable sum for the privilege of opening any drain into said public drain, or common sewer.

Power of city to construct drains and sewers., 1839, c. 46. § 1. [Accepted by the inhabitants, March 23, 1839. Town records, vol. 1, p. 176.]

2. The selectmen of the several towns, and the mayor and aldermen of the several cities, in the Commonwealth, may lay, make, maintain and repair all main drains or common sewers in their respective towns, and cities; and all the main drains or common sewers which have heretofore been, or which may hereafter be constructed by any town or city, shall be taken and deemed to be the property of such town or city.

Mayor and aldermen, &c. may lay, &c. main drains, and common sewers, 1841. 115, § 1. (Accepted by city council, April 26, 1841. City Records, vol. 1, p. 311.)

3. Every person who may hereafter enter his particular drain into any main drain or common sewer so constructed as aforesaid, for the draining of his cellar or land, or in obedience to the by-laws or ordinances of the town or city, or who, by any more remote means, shall receive any benefit thereby, for draining his cellar or land, shall pay to the town or city a proportional part of the charge of making and repairing such main drain or common sewer, to be ascertained and assessed by the selectmen in case of towns, and by the mayor and aldermen in case of cities, and by them certified and notice thereof given to the party to be charged, or his tenant or lessee.

Persons entering particular drains into common sewer, &c. shall pay a proportional part of the expense. Ibid. § 2. 1 Metc. 130.

4. And all assessments, so made, shall constitute a lien on the real estates assessed for one year after they are laid, and may together with all incidental costs and expenses be levied by sale thereof if the assessment is not paid within three months after a written demand of payment, made either upon the person assessed, or upon any person occupying the estate; such sale to be conducted in like manner as sales for the non-payment of taxes.

Assessments to be a lien, for one year, on real estate. Estate may be sold for payment. 1841, 115, § 3.

5. Any person who may deem himself aggrieved by

Any person ag-

grieved by assessment may appeal to C. C. Pleas, &c. Ibid, § 4.

any such assessment, may, at any time within three months from receiving notice thereof, appeal to the county commissioners, and the said county commissioners may examine the parties, and any other persons, on oath, touching the matter submitted to them, and shall settle and determine the proper amount of charge or assessment, and in all cases the decision of said county commissioners shall be final, and in case the assessment made by the selectmen or mayor and aldermen shall not be reduced on such appeal, the town or city shall recover costs, but otherwise shall pay costs: *provided however*, that in all cases of an appeal as aforesaid, the appellant, before entering it, shall give one month's notice, in writing, to the selectmen or mayor and aldermen, of his intention to appeal, and shall therein particularly specify the points of his objection to the assessment made by them, to which specification he shall be confined upon the hearing of the appeal.

City, &c. may pay a part of expense. Ibid, § 5.

6. Nothing contained in this and the four preceding sections shall prevent any town or city from providing, by by-law, ordinance or otherwise, that a part of the expense of constructing, maintaining and repairing main drains or common sewers, shall be paid by such town or city.[1]

An Ordinance providing for the construction, and repair of common sewers and drains.[1]

Be it ordained by the City Council of the city of Salem, as follows:

SECT. 1. All common sewers and drains which shall

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[1] The statute of 1841, c. 115 § 6, provided that the preceeding sections should not take effect until accepted by the legal voters of any town, at a meeting called for that purpose or the mayor and aldermen and common council of any city. The city council of Salem accepted the same April 26, 1841. (City Records vol. 1, p. 311.) For provisions applicable to common sewers and main drains, in other cases, see Rev. Stat. c. 27.

[1] Passed August 26, 1839.

hereafter be considered necessary, by the mayor and aldermen, in any street or highway, shall be made and laid, and together with all common sewers and drains, now owned or used by the city, whether leading through the streets or highways, or from the streets or highways through private lands, shall be kept in repair at the expense of the city, by the commissioner of streets, under the direction of mayor and aldermen.

Common sewers and drains to be laid and kept in repair by commissioner of streets. Aug. 26, 1839.

SECT. 2. The commissioner of streets, shall keep a particular account of the expense of making or repairing every common sewer and drain, and shall report the same to the mayor and aldermen, within ten days after the same shall be finished.

Expense to be kept account of, and reported to mayor and aldermen.

SECT. 3. A proportional part of the expense of making or repairing any common sewer and drain, to be ascertained by the mayor and aldermen, shall be assessed upon every person entering his particular drain into the same, or who by any more remote means receives any benefit thereby, for the draining of his cellar or land. An account of such assessments shall be entered by the city clerk in a book to be kept for that purpose, and shall be delivered to the city treasurer, who shall proceed forthwith to collect the same; and every assessment which is not paid within sixty days after the account thereof has been presented to the person by whom it is due, shall be put in suit.

Expense to be assessed on persons entering common drains and on those benefited.

Treasurer shall collect assessments.

SECT. 4. The mayor and aldermen, in all cases where there is a common sewer in any street or highway, shall have authority, whenever in their opinion it shall be necessary for the public health, to require every owner of land adjoining such street or highway, his agent or tenant, to make a sufficient drain from his house, yard, or lot, and to enter the same into the common sewer. In every such case, notice in writing shall be given by the mayor and aldermen, to the said owner, his agent, or tenant, specifying the time in which such drain must be completed; and if the said

Mayor and aldermen may require owners of land to make drains.

Shall make the same at owner's expense in case they neglect.

owner, his agent, or tenant, shall neglect to complete the same within the time specified, the mayor and aldermen shall cause the same to be done; and the expense thereof, with interest, together with ten per cent, damages, shall be recovered by an action of the case, to be brought by the mayor and aldermen in behalf of the city, before any court proper to try the same; provided, that in no case shall the damages claimed, exceed the sum of twenty dollars.

Drains entering common sewers to be built as mayor and aldermen shall direct.

Penalty for entering drains without a permit.

SECT. 5. All particular drains which may be entered into the common sewers shall be of such dimensions, structure and materials, and shall be laid in such manner, as the mayor and aldermen may direct; and any person, who shall enter a particular drain into a common sewer, without the permission of the mayor and aldermen, or without conforming to their directions, shall forfeit and pay the sum of twenty dollars.

STEAM ENGINES AND FURNACES.

STATUTES.

1. No furnace for melting iron, or steam engine for planing, &c. or in which any other fuel than coal, is used, to be erected, &c., without license.
2. Mayor and aldermen, &c., to prescribe rules, &c., as to furnaces and engines previously erected or in use, in certain cases.
3. Engine or furnace hereafter erected without license, to be deemed a common nuisance.
4. Mayor and aldermen may examine steam engines and prohibit their use if unsafe.
5. Power of abatement or removal
6. Proceedings on an application for a license.
7. Persons aggrieved by any order under § 2, may apply to C. C. P. for a jury.
8. An injunction to restrain the use of such engine, &c., may be issued, on such application.
9. Verdict of the jury, how found, returned and accepted, and effect thereof.
10. Damages and costs, when and in what manner to be awarded.
11. No steam boiler to be used, unless provided with fusible safety plug, &c.
12. Penalty for removing such plug, &c.
13. Penalty for using steam boiler without safety plug.

STATUTES.

1. No furnace for melting of iron, or stationary steam engine, designed for use in any mill for the planing or sawing of boards, or turning of wood in any form, or when any other fuel than coal is used to create steam, shall hereafter be erected, or put up to be used, in any city or town in this Commonwealth, unless the mayor and aldermen of such city, or selectmen of such town, shall have previously granted license therefor, designating the place where the building or buildings shall be erected, in which such steam engine or furnace shall be used, the materials and construction thereof, and such other provisions and limitations, as to the height of flues, and protection against fire, as they shall judge necessary for the safety of the neighborhood; such license to be granted on written application, and to be recorded in the records of such city or town.

No furnace for melting iron, or steam engine for planing, &c., or in which any other fuel than coal is used, to be erected, &c., without license. 1845. 197, § 1. Accepted by city council, April 14, 1845. (City records, vol. 2, p. 8.)

2. Whenever the mayor and aldermen of any city, or the selectmen of any town, after due notice in writing to the owner of any such steam engine or furnace, erected or in use previous to the passage of the act of 1845, and a hearing of the matter, shall adjudge the same to be dangerous, or a nuisance to the neighborhood, they may make and record and order, prescribing such rules, restrictions and alterations, as to the buildings in which such steam engine or furnace is constructed or used, the construction and height of its smoke flues, or other provisions, as they shall deem the safety of the neighborhood to require; and it shall be the duty of the city or town clerk to deliver a copy of such order to a constable, who shall serve such owner with an attested copy thereof, and make return of his doings thereon to said clerk, within three days from the delivery thereof to him.

Mayor and aldermen, &c. to prescribe rules, &c., as to furnaces and engines previously erected or in use, in certain cases. Ibid, § 2.

3. Any such engine or furnace hereafter erected, without license made and recorded as aforesaid in section first, shall be deemed and taken to be a common

Engine or furnace hereafter erected without license, to be deemed a

common nuisance. Ibid, § 3.

nuisance, without any other proof thereof than proof of its use; and any steam engine or furnace used contrary to the provisions of section second, shall be taken and deemed to be a common nuisance.

Mayor and aldermen, &c may examine steam engines and prohibit their use if unsafe. 1842, c. 191, § 1.

4. The mayor and aldermen of any city, and the selectmen of any town, or any person by them authorized, may, after notice of to the parties interested, examine any steam engine in such city or town, and for that purpose may enter any house, shop, or building, and if, after such examination, it shall appear probable that the use of such engine is unsafe, they may issue a temporary order to suspend the use thereof, and then, after giving the parties interested, so far as they may be known, an opportunity to be heard, if they shall adjudge such steam engine unsafe or defective, or unfit to be used, they may pass a permanent order prohibiting the use thereof until it shall be rendered safe; and if such steam engine shall be used after the passage of such temporary order until the final adjudication thereon, or after such final adjudication and order until it shall be rendered safe, contrary to either of such orders, and after notice thereof to the owner or person having charge thereof, such engine shall be deemed and taken to be a common nuisance, without any other proof thereof than its use.

Power of abatement or removal. Ibid, § 2 1845, 197 § 4.

5. Said mayor and aldermen and selectmen shall have the same power and authority to abate and remove any such steam engine, erected or used contrary to the foregoing provisions, as are given to the board of health in the tenth and eleventh sections of the twenty-first chapter of the Revised Statutes.

Proceedings on an application for a license. 1845, 197, § 5.

6. Whenever application shall be made for license as aforesaid, the mayor and aldermen of any city, or selectmen of any town, shall assign a time and place for the consideration of the same, and shall cause public notice thereof to be given at least fourteen days beforehand, in such manner as said mayor and aldermen or

selectmen may direct, and at the expense of the applicant, in order that all persons interested may be heard before the granting of a license.

Persons aggrieved by any order under § 2, may apply to C. C. P. for a jury. Ibid, § 6.

7. Any owner of a steam engine or furnace, aggrieved by any such order, as provided in section second, may apply to the court of common pleas, if sitting in the county, in which such engine or furnace is situated, or to any justice thereof in vacation, for a jury, and such court or justice shall issue a warrant for a jury to be impanelled by the sheriff, in the same manner as is provided in the twenty-fourth chapter of the Revised Statutes, in regard to the laying out of highways; such application shall be made within three days after such order is served upon the said owner; and the said jury shall be impanelled within fourteen days from the issuing of said warrant.

An injunction to restrain the use of such engine, &c., may be issued, on such application. Ibid, § 7.

8. Upon any application to said court of common pleas, or to any justice thereof, for a jury, said court or justice, on granting the same, may, in its or his discretion, issue an injunction restraining the further use of said engine or furnace, until the final determination of such application by the jury and court to which such verdict may be returned.

Verdict of the jury, how found, returned and accepted, and effect thereof. Ibid, § 8.

9. The jury shall find a verdict either affirming or anulling the said order in full, or making alterations therein, as they may see fit: which verdict shall be returned to the next term of the said court by the sheriff for acceptance, in like manner as in the case of highways, and which verdict being accepted, shall be binding to the same effect as the original order would have been without such appeal.

Damages and costs, when and in what manner to be awarded. Ibid, § 9.

10. If the verdict shall affirm such order, costs shall be recovered by the city or town against such applicant; if the verdict shall annul such order in whole, damages and costs shall be recovered by the complainant against such city or town; and in case the verdict shall alter

such order in part, the court may render such judgment as to costs, as to justice shall appertain.[1]

No steam boiler to be used, unless provided with fusible safety plug, &c. 1850, 277, § 1.

11. No person or corporation shall use, or cause to be used, any steam-boiler in this Commonwealth, unless the same be provided with a fusible safety plug, to be made of lead, or some other equally fusible material, and to be of a diameter of not less than one-half an inch, which plug shall be placed in the roof of the fire-box, when a fire-box is used, and, in all cases, shall be placed in a part of the boiler fully exposed to the action of the fire, and as near the top of the water line as any part of the fire-surface of the boiler; and, for this purpose, it shall be lawful to use Ashcroft's "protected safety fusible plug."

Penalty for removing such plug Ibid, § 2.

12. If any person shall, without just and proper cause, remove from the boiler the safety plug therof, or shall substitute therefor any material more capable of resisting the action of the fire than the said safety plug so removed, he shall be punished by a fine not exceeding one thousand dollars.

Penalty for using steam boiler without such safety plug. Ibid, § 3.

13. If any person or corporation shall use, or cause to be used, in this Commonwealth, for the space of six consecutive days, a steam-boiler unprovided with a safety fusible plug, as named in the eleventh section, such person or corporation so offending, shall be punished by a fine not exceeding one thousand dollars.[2]

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1 The statute of 1845, c. 197, § 10, provided that the said act should not be in force in any town or city, unless the inhabitants of the town or the city council of the city, should adopt the same, at a legal meeting of said inhabitants or city council, called for that purpose. The city council of Salem accepted the same April 14, 1845. (City Records, vol. 2, p. 8.)

2 Stat. 1849, c. 139, upon the same subject, was repealed by stat. 1850, c. 277, § 4.

STREETS.

STATUTES.

1. City council to have exclusive power in laying out and widening streets. May estimate damages. Any party aggrieved as to damages may complain to county commissioners.
2. Notice to be given before laying out, &c.
3. County commissioners authorized to lay out, &c., highways.
4. Time for petition extended in certain cases.
5. Ways, opened and dedicated, shall not become chargeable upon city unless, &c.
6. Entrances to such ways to be closed up, &c.
7. City liable unless notice is given.
8. Rights of gas company to sink pipes, &c. under the control of the mayor and aldermen.
9. Aqueduct company may dig up, streets by written consent of mayor and aldermen.
10. Owner of land taken for a town or private way to have time to remove trees, &c.
11. Effect of not making such removal within time allowed.
12. Time may be extended by a jury if one is ordered to assess damages, &c.
13. Bound stones to be erected at termini and angles of roads.
14. Private streets opened to use of public to be graded by, or at expense of abbutters. Existing agreements not effected. Grading not to be construed, dedication or acceptance.
15. Grades may be established and recorded by mayor and aldermen and selectmen, who shall not be held thereby to accept street.
16. Obstructions prohibited without consent of mayor and aldermen or selectmen.

ORDINANCES.

1. Streets to retain their present names till altered.
2. City clerk to keep record of streets, &c.
3. Mayor and aldermen to have power to number buildings.
4. City marshal to keep streets open. Penalty for obstructing.
5. Disorderly behavior, and indecent, profane, and insulting language.
6. Penalty for digging up streets. Persons so digging to repair same.
7. When drain or aqueduct is repaired, a fence and lights to be put up.
8. Filth and rubbish not to be deposited in streets.
9. Riding or driving faster than six miles an hour forbiden. Not to drive round a corner faster than a walk.
10. Placing coal or firewood in streets regulated. Depositing gravel and building materials regulated.
11. Sawing or piling firewood on sidewalks, &c.
12. Exposing gaming tables.
13. Fruit and other stands.
14. Snow to be removed from sidewalks by abutters. To extend to snow falling from any building.
15. Sidewalks encumbered with ice to be made safe, &c.
16. Ice or snow thrown into streets to be broken up, &c.
17. Water spouts.
18. Cellar doors and doorways.

19. Defacing or injuring sign-posts, buildings, &c.
20. Cellars, &c., not to be left uncovered.
21. Posts not to be erected without permission, not to be defaced or cut down. Mayor and aldermen may remove same.
22. Shooting with bow and arrows, throwing stones, &c.
23. Bathing in waters surrounding city.
24. Wantonly frightening horses.
25. Buildings and fences not to be erected on streets, without ascertaining bounds. Encroachments to be abated.
26. Guns, pistols, squibs, &c., not to to be fired.
27. Horses, kine, swine, &c, not to go at large.
28. Awnings and shades.
29. Blasting rocks.
30. Defacing trees. Horses and other animals not to be fastened to trees.
31. Sidewalks to be kept open.
32. Carriages, &c., forbidden on side walks.
33. Placing lumber, bales, &c., on sidewalks.
34. Coal holes, &c., not to be made without license, not to be left open after sunset, &c.
35. Standing in a group so as to obstruct the passages.
36. Obstructing passage to houses &c
37. Meaning of the word "street."
38. Who shall be liable to penalties.
39. Acts forbidden to be done without license, may be licensed.
40. Complaint for violation of this ordinance to be made within six months.
41. When to take effect.
[42.] New streets, width of.
[43.] City council to approve.
[44.] Marginal streets.
[45.] Commissioner of streets appointed. Compensation.
[46.] Duties of commissioner of streets.
[47.] Same subject.
[48.] Shall attend at city hall. Shall keep record of his doings. Shall make report to city council.
[49.] Commissioner to furnish edgestone to applicants. Applications to be made to city clerk.
[50.] Commissioner to keep a record of edgestones furnished, and report same.
[51.] Edgestones to be laid, and sidewalks to be constructed, under direction of commissioner of streets. Owner neglecting, commissioner shall complete sidewalks. Owners of land fronting on sidewalks to keep the same in repair.

City council to have exclusive power in laying out and widening of streets
City charter § 12 may estimate damages

1. The city council shall have exclusive authority and power to lay out any new street or town way, or widen or otherwise alter or discontinue any street or town way in said city, and to estimate the damages[1] any individual may sustain thereby; and all questions

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1 As to what may be estimated as damages see *Parks vs Boston*, (8 Pick. 218.) *Crockett vs. Boston*, (5 Cushing, 182.) *Hancock vs. Boston*, (1 Metc. 122.) *Patterson vs. Boston*, (20 Pick. 159; 23 Pick. 425.) *Brooks vs. Boston*, (19 Pick. 174.) For provisions as to recovery of damages for the raising or lowering highways, see R. S. c. 25, § 6. See also *Brown vs. Lowell*, (8 Metc. 172.)

relating to the subject of laying out, widening, altering, or discontinuing any street, shall be first acted upon by the mayor and aldermen. And any person aggrieved by the decision or judgment of said city council, may, so far as relates to damages, make complaint to the next meeting of county commissioners, in the county of Essex, who are hereby empowered to hear and determine the same by a jury, or by a committee, if the parties agree, in the manner authorized by "an act to establish county commissioners, and to repeal the several acts establishing the courts of sessions, and in addition thereto, and the act establishing commissioners of highways," where a party claims greater damages than are awarded by said commissioners.

Any party aggrieved as to damages may complain to county commissioners.

2. No town way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intentions of the selectmen of the town to lay out or alter the same, shall be left by them, or by their order, at the usual place of abode of the owners of the land, over which such way is proposed to be laid out or altered, or unless such notice be delivered to such owner in person, or to his tenant or authorized agent. *Provided*, that if the owner shall have no such place of abode in the town, and no tenant or authorized agent therein, known to the selectmen, or, if being a resident in the town, he shall not be known as such to the selectmen, then such notice shall be posted up in some public place in the town, seven days at least before laying out such way.[1]

Notice to be given before laying out, &c. R. S. c. 24, § 67.

3. By the twenty-fourth chapter of the Revised Statutes, the authority to lay out, alter, and discontinue highways, and to assess damages therefor, is given to the county commissioners; with a right to any party

County commissioners authorized to lay out, &c., highways. R. S. 24.

1 The mayor and aldermen cannot legally lay out a street, without first giving to all persons interested, notice of their intention so to do. *Stone v. City of Boston*, (2 Metc. 220.)

aggrieved to apply for a jury; and the method of proceeding is prescribed in detail.

Time for petition extended, in certain cases. 1849, 200.

4. In all cases, where any suit shall hereafter be brought, wherein the validity or legal effect of the proceedings of any county commissioner, selectman, town, city, or mayor and aldermen, in respect to the laying out, altering or discontinuing of any way, which laying out, altering or discontinuing, shall take place after the passage of this act shall be drawn in question, the time limited for applications for a jury to assess the damages shall be so far extended, that such application may be made at any time within one year after the final determination of any such suit; *provided*, that such suits shall have been brought within one year from the time of such laying out, altering or discontinuance.

Ways opened and dedicated shall not become chargeable upon city, unless, &c. 1846, 203, § 1.

5. No way heretofore opened and dedicated to the public use, and not already become a public way, and no way hereafter opened and dedicated to the public use, shall become chargeable upon any city or town, unless such ways shall be laid out and established by such city or town, in the manner prescribed by the statutes of this Commonwealth.

Entrances to such ways to be closed up, &c. Ibid, § 2.

6. It shall be the duty of the mayor and aldermen of each city, and of the selectmen of each town in this Commonwealth, and they are hereby authorized and required, whenever, and so long as the public safety may demand it, to direct and cause the entrances of all the ways aforesaid, entering on and uniting with any existing public way, to be closed up, or, by other sufficient means, to caution the public against entering upon such ways.

City liable unless notice is given. Ibid, § 3.

7. In case any city or town shall not close up the entrances to the ways aforesaid, or give other sufficient notice that the same are dangerous, such city or town so neglecting, shall be liable for any damages arising from any defects therein, in the same manner as if such ways were duly laid out and established.

Right of gas company to sink pipes, &c., under the control of the mayor and aldermen
1847, c. 67, § 3.

8. The Salem Gas Light Company, with the consent of the mayor and aldermen, of the city of Salem, shall have power and authority to open the ground in any part of the streets, lanes and highways, in the city, for the purpose of sinking and repairing such pipes and conductors as it may be necessary to sink for the purpose expressed in the act incorporating said company. And the said corporation, after opening the ground in the said streets, lanes or highways, shall be held to put the same again in repair, under the penalty of being prosecuted for a nuisance; *provided*, that the said mayor and aldermen for the time being shall at all times have the power to regulate, restrict and control the acts and doings of said corporation, which may, in any manner, affect the health, safety or convenience of the inhabitants of said city.

Aqueduct corporation may dig up, &c. streets by written consent of mayor and aldermen.
R. S. c 40, § 9.

9. Any aqueduct corporation may, with the assent of the selectmen of any town, or mayor or aldermen of any city, in writing, dig up and open any street or way, for the purpose of placing such pipes as may be necessary in constructing such aqueduct or for repairing or extending the same; *provided*, the same be done in such manner as not to prevent the convenient passing of teams and carriages: By the § 4 of the act of 1839, c. 114, the Salem and Danvers Aqueduct corporation were made subject to the foregoing provision.

1839, c. 114, § 4.

Owner of land taken for town or private way to have time to remove trees, &c.
1848, 98, § 1.

10. When any town or private way shall be laid out, altered, or widened, by selectmen or county commissioners, they shall, in their report or return thereof, allow the owner of the land, through which said way may pass, a reasonable time to take off his trees, fences, and other property, which may obstruct the building of such way.

Effect of not making such removal within time allowed.
Ibid, § 2.

11. If said owner shall not remove the same within the time allowed for that purpose, he shall be deemed to have relinquished his right thereto, for the benefit of the town, if said way be town way; and if said way

be a private way, for the benefit of such person or persons as said selectmen or county commissioners shall determine.

Time may be extended by jury, if one is ordered to assess damages, &c. Ibid, § 3.

12. If a jury shall be ordered to assess the damages done by the location, alteration, or widening of such way, they may extend the time for the owner of the land to remove his trees, fences, and other property, as aforesaid; and if the owner shall neglect to remove the same within such extended time, he shall be deemed to have relinquished his claim thereto, as before provided.

Bound stones to be erected at termini and angles of roads. 1848, 192.

13. The county commissioners of the several counties, and the selectmen of the several towns, and the mayor and aldermen of the several cities of this Commonwealth, shall cause permanent stone bounds, not less than three feet long,—two feet of which, at least, shall be inserted in the earth,—to be erected at the termini and angles of all roads hereafter laid out by them, when practicable; and when not practicable, a heap of stones, a living tree, a permanent rock, or the corner of an edifice, may be a substitute for said stones.

Private streets open to the use of public, to be graded by, or at expense of abutters. 1853, 315, § 1.

14. When any street or way which now is, or hereafter shall be opened, in any city, or town which shall accept this act as hereinafter provided, over any private land by the owners thereof, and dedicated to, or permitted to be used by the public, before such street or way shall have been accepted and laid out according to law, it shall be the duty of the owners of the lots abutting thereon, to grade such street or way at their own expense, in such manner as the safety and convenience of the public shall, in the opinion of the mayor and aldermen of any city, or selectmen of any town, require; and if the owners of such abutting lots shall, after reasonable notice given by the said mayor and aldermen, or selectmen, neglect or refuse to grade such street or way in manner aforesaid, or to close the same from public use, it shall be lawful for the said mayor and aldermen, or selectmen,

Accepted by city council, August 1, 1853. [City Records, vol. 3, p. 77.]

to cause the same to be graded as aforesaid, and the expense thereof shall, after due notice to the parties interested, be equitably assessed upon the owners of such abutting lots, by the said mayor and aldermen, or selectmen, in such proportions as they shall judge reasonable; and all assessments so made shall be a lien upon such abutting lands, in the same manner as taxes are now a lien upon real estate: *provided, always*, that nothing contained in this act shall be construed to affect any agreements heretofore made, respecting any such streets or ways as aforesaid, between such owners and any city or town; *provided, also*, that any such grading of any street or way, by the mayor and aldermen or selectmen as aforesaid, shall not be construed to be an acceptance of such street or way by any such city or town; and that the said grading of such street or way, by any such owners, or on such notice or procurement of such mayor and aldermen, or selectmen, shall not be construed to be a dedication to the public use of any such street or way, or any part thereof, by the owner or owners of the same.

Existing agreements not effected.

Grading not to be construed dedication or acceptance.

15. The mayor and aldermen of any city, or the selectmen of any town, by which this act shall be accepted, are hereby authorized to fix and establish the grade of any street or way mentioned in the first section of this act, before the same is actually graded as therein provided, or of any other street or way not legally accepted, and to cause a plan of such grade to be deposited in the office of the clerk of such city or town; and all those who improve the lots abutting on any such street or way, after the grade of it shall have been so established and recorded, shall in their improvments, either by building or otherwise, conform to said grade, and shall be entitled to no damages for the making of such street or way according to said grade: *provided*, such street or way be actually made within two years after the grade thereof is established and recorded. The establishing and recording of the grade

Grades may be established and recorded by mayor and aldermen, and selectmen, who shall not be held thereby to accept street. Ibid, § 2.

of any street or way as aforesaid, shall not be considered an acceptance of such street or way by any city or town.

Obstructions prohibited, without consent of mayor and aldermen, or selectmen. Ibid, § 3.

16. No street or way mentioned in the first and second section of this act shall be dug up, or in any way obstructed in any part thereof, without the consent of the mayor and aldermen of the city, or the selectmen of the town in which such street or way is situated.[1]

An Ordinance in relation to streets.[2]

Be it ordained by the city council of the city of Salem, as follows:

Streets to retain their present names till altered. August 17, 1853.

SECT. 1. The several streets in the city shall continue to be called and known by the names given to them respectively by the selectmen of the town of Salem, and mayor and aldermen of the city, or the city council, until the same shall be altered by the city council.

City clerk to keep

SECT. 2. The city clerk shall keep a book, in which

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[1] The stat. of 1853, c. 315, § 4, provided that this and the two preceding sections should not take effect in any city or town until the same should be accepted by the city council of such city or by the inhabitants of such town, at a legal meeting. The city council of Salem accepted the same August 1, 1853. [City Records, vol. 3, p. 77.] For further general provisions respecting streets and highways, see Rev. Stat. c. 24, 25, 27, § 1; stat. 1836, c. 278; 1837, c. 164; 1838, c. 30, 104; 1839, c. 76, 90, 144; 1841, c. 105; 1842, c. 46, 86; 1843, c. 70; 1846, c. 222; 1847, c. 254; 1848, c. 98, 123, 192; 1849, c. 200; 1850, c. 5; 1851, c. 32, 214; 1853, c. 315.

By Rev. Stat. c. 2, § 6, clause sixth, in the construction of all statutes, the word "highway" may be construed to include county bridges; and it shall be equivalent to the words "county way," "county road," and "common road."

[2] Passed August 17, 1853.

the names of all the streets and highways, which now are, or may hereafter be accepted or laid out in the city, shall be alphabetically arranged, with the date of such laying out or acceptance, and the width thereof, and all alterations therein from time to time made by the city council.

record of streets, &c.

SECT. 3. The mayor and aldermen shall have power to cause numbers of regular series to be affixed to all dwelling houses and other buildings fronting on any street within the city, at their discretion; and shall also have power to determine the form, size and material of such numbers and the mode, place, succession and order of affixing them on the houses and other buildings.

Mayor and aldermen to have power to number buildings.

SECT. 4. It shall be the duty of the city marshal to cause a free passage in the streets and ways to be kept open for the safe and convenient passing of the same. And whoever shall continue any cart, carriage or vehicle of any description, in any street or way, so as to obstruct the same, after having been requested by any person having occasion to use such street or way, or after having been ordered by the city marshal or one of his deputies, to remove such obstruction, shall be liable to a penalty of not less than one dollar, nor more than ten dollars, for every such offence.

City marshal to keep streets open.

Penalty for obstructing streets.

SECT. 5. No person shall be guilty of any rude or disorderly behavior, or use indecent, profane, or insulting language in any street or near any dwelling house or other building, to the annoyance or disturbance of any person, under a penalty of not less than one dollar, nor more than ten dollars, for every such offence.

Disorderly behavior, and indecent, profane, and insulting language.

SECT. 6. No person or persons shall dig up or assist in breaking or digging up any part of any street, or remove any gravel or other similar thing therefrom, for any purpose whatever, without the license of the mayor and aldermen, in writing, first had and obtained, and upon such restrictions and conditions as they may think

Penalty for digging up streets, &c.

proper, under a penalty of not less than five, nor more than twenty dollars.[1]

Persons so digging, to repair same, &c.

Whosoever shall, by virtue of such license, break or dig up, or cause to be dug or broken up, any part of any street, shall within such time as the mayor and aldermen shall order, cause the same to be repaired and amended, to the satisfaction of the commissioner of streets, under a penalty of not less than five nor more than twenty dollars for each and every day he or they shall neglect or refuse so to do after such order: and in case of neglect to amend and repair as aforesaid, it shall be the duty of the commissioner of streets to cause such damage to be amended and repaired, and the person or persons, who caused such injury, shall forfeit and pay the whole expense and cost thereof, in addition to the penalty aforesaid.

When drain or aqueduct is repaired a fence and lights to be put up.

SECT. 7. When any drain or aqueduct shall be opened or laid, or any aperture shall be made, in any street, the person or persons, or either of them, by or for whom the said drain or aqueduct shall be opened or laid, or such aperture made, shall cause a rail or other sufficient fence to be placed and fixed, so as to enclose such drain, aqueduct or other aperture, and the dirt, gravel, or other material thrown into the street, as aforesaid; and such fence shall be continued during the whole time such drain, aqueduct or aperture shall be open; and a lighted lantern, or some other proper and sufficient light, shall be affixed to some part of such fence or in some other proper manner over or near such open drain, aqueduct or aperture, and the dirt, gravel or other material, taken from the same, and so kept from

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1 By Rev. Stat. c. 27, § 1, it is provided that if any person shall dig or break up the ground in any highway, street or lane, in any town, for the laying, altering, or repairing of any drain, or common sewer, without the consent of the selectmen, in writing, he shall forfeit the sum of five dollars for each offence, to the use of the town, to be recovered by the treasurer thereof.

the beginning of twilight of the evening through the whole of the night, and shall be continued every evening and night, during all the time such drain, aqueduct or aperture shall be open or in a state of repair; and whosoever shall be guilty of a breach of any part of this section, shall be liable to a penalty for each offence, of not less than five nor more than twenty dollars.

Filth and rubbish not to be deposited in streets, &c.

SECT. 8. No person or persons shall put or cause to be put or placed in any street or other public place in this city, any dust, dirt, garbage, carrion, shreds, shavings, filth, oyster shells, offals, or any kind of rubbish, from any house or other building or yard, or any place whatever, except in such place and in such manner as shall be directed or permitted by the mayor and aldermen, or by the board of health, on pain of forfeiting and paying for each offence a sum not less than one nor more than five dollars. And in case any person or persons so offending shall refuse or neglect to remove such matter or thing, without delay, after notice given to him, her or them, by the city marshal, so to remove the same, such person or persons shall forfeit and pay a further sum not less than two nor more than twenty dollars for any such offence.

Riding or driving faster than six miles an hour forbidden.

SECT. 9. No person or persons having for the time being the care or use of any horse or other beast of burthen, carriage or draught, shall ride, drive or permit the same to go at a faster rate than six miles an hour in any street; and every such person shall hold in his or her hands strong reins or lines fastened to the bridle of such beasts, or shall walk within reach of the bridle or halter of such beasts to enable him or her to restrain and guide them. And no such person, nor any person on horseback shall turn round the corner of any street at a pace faster than a walk. Whoever shall offend against any provision of this section shall be liable to a fine of not less than one dollar nor more than ten dollars.

Not to drive round the corner faster than a walk.

Placing coal or firewood in the streets regulated.

SECT. 10. No person shall suffer more than two cords of wood or bark, or three tons of coal, belonging to him or her, to be at any one time in any street, nor shall suffer any wood, coal or bark to lie in any street longer than two successive nights, nor to lie in any street so as to unnecessarily obstruct the same, nor to remain in any street without a lighted lamp or lantern being kept over or near the same, from the beginning of twilight in the evening through the whole of the night. And no person shall deposit any gravel, stone, timber, boards, lumber, or building materials of any kind, in any street, without a license in writing from the mayor and aldermen, and under such conditions, restrictions and limitations as they may deem expedient. Whoever shall offend against any provisions of this section shall be liable to the penalty for each offence, of not less than one dollar nor more than ten dollars.

Depositing gravel and building material, regulated.

Sawing or piling wood on sidewalks, &c.

SECT. 11. No person shall saw any fire-wood or pile the same upon any foot or side walk of any street; and no person shall stand on any such foot or side walk with his wood saw or horse to the hindrance or obstrution of any foot passenger under a penalty of not less than one dollar nor more than ten dollars.

Exposing gaming tables.

SECT. 12. No person shall expose in any street, or other public place in this city, any table, or device of any kind, upon or by which any game of chance or hazard can be played; and no person shall play at any such table or device, or at any unlawful game, in any street, or place aforesaid, under the penalty of not less than three nor more than twenty dollars, for either of said offences.

Fruit and other stands.

SECT. 13. No person shall place or keep any table, stall, or erection of any kind, in any street, or upon any sidewalk, for the sale of fruit, or any goods or articles whatever, except by permission of the mayor and aldermen, or by some person or persons by them author-

ized to grant permission, in writing first had and obtained, under the penalty of one dollar for every such offence, and the further penalty of one dollar for every day he or she shall continue the same in any street, or upon any sidewalk, after being directed by the city marshal to remove the same.

Snow to be removed from sidewalks by abutters.

SECT. 14. The tenant, occupant, and, in case there shall be no tenant, the owner, or any person having the care of any building or occupied lot of land, having a raised grade or brick sidewalk, bordering on any street, within the compact portion of the city, shall, after the ceasing to fall of any snow, and after four hours notice having been given by the city marshal, cause the same to be removed from the sidewalk in front of said building or land, and in default thereof, upon complaint made by the city marshal, shall forfeit and pay a sum not less than one dollar, nor more than ten dollars; and for each and every day thereafter that the same shall remain on such sidewalk, such tenant, occupant, owner or other person shall forfeit and pay a sum not less than one dollar nor more than ten dollars. The provisions of this section shall also apply to the falling of snow from any building.[1]

To extend to snow falling from any building.

Sidewalks encumbered with ice to be made safe, &c.

SECT. 15. Whenever any raised, graded or bricked sidewalk, or any part thereof, adjoining any building

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[1] A by-law of a city, requiring the owners or occupants of houses bordering on streets to clear the snow from the sidewalks adjoining their respective houses and lands, is not, strictly speaking, a by-law levying a tax; and inasmuch as the burden created by it is imposed on a numerous class, and upon all persons equally who come within the description of such class, and as they commonly derive a peculiar benefit from the duty required, and are peculiarly able to perform it, with the promptness, which the good of the community demands, the by-law is not partial and unequal, within the sense of the provision of the constitution, that assessments, rates and taxes, imposed aad levied on the inhabitants of the Commonwealth, shall be proportional and reasonable; but such by-law is reasonable and valid. *Goddard, Petitioner*, (16 Pick. 504.)

Such a by-law is not invalid on account of a part of the city peculiarly situated being expressly exempted from its operation. *Ibid.*

or occupied lot of land, on any street, within the compact portion of the city, shall be encumbered with ice, it shall be the duty of the occupant, and in case there is no occupant, of the owner, or any person having the care of such building or lot, to cause such sidewalk to be made safe and convenient, by removing the ice therefrom, or by covering the same with sand or some other suitable substance; and in case such owner, or occupant, or other person should neglect so to do after four hours notice having been given by the city marshal, he shall forfeit and pay the sum of not less than one dollar nor more than five dollars, and a like sum for every day that the same shall continue so encumbered.

Ice or snow thrown into street, to be broken up, &c.

SECT. 16. Every person who shall lay, throw or place, or cause to be laid, thrown or placed, any ice or snow into any street, within the city, shall cause the same to be broken into small pieces, and spread evenly on the surface of such street; and, in default thereof, shall be liable to a penalty of not less than two dollars, nor more than five dollars for every offence.

Spouts.

SECT. 17. No person shall suffer any spout to lead or cast water upon any sidewalk over the heads of passengers, under the penalty of one dollar, and the further penalty of five dollars for every week he shall neglect to alter or remove such spout, after notice given by the city marshal so to do.

Cellar doors and doorways.

SECT. 18. No person shall suffer a cellar door, or cellar doorway from the sidewalk into any cellar, to be kept open, when not in immediate use; nor when in immediate use, after the beginning of twilight, except a good and sufficient light be constantly kept at the entrance of such passage, under the penalty of one dollar for every such offence, and the further penalty of two dollars for every day's neglect to stop such door or passage, after notice given by the city marshal so to do.

Defacing or injuring sign posts, buildings, &c.

SECT. 19. No person shall deface, injure or destroy any sign post or board erected by order of the mayor

and aldermen, or shall deface and injure with paint or otherwise, any signpost or board, fence or building, in this city, under a penalty for each offence, of not less than four dollars nor more than than twenty dollars.

Cellars, &c., not to be left uncovered.

SECT. 20. No cellar, vault, cistern or well, shall be left uncovered, unless the same be enclosed by a safe and sufficient fence, curb or guard, under penalty of three dollars for every such offence, and five dollars for every week the offence may be continued, after notice from the city marshal to enclose the same as aforesaid.

Posts not to be erected without permission.

SECT. 21. No person shall erect any post or posts in any street or public place in this city, except by the permission of the mayor and aldermen, under the penalty of two dollars for every such offence, and the further penalty of two dollars for every week afterwards, so long as such person shall continue such post or posts in such place, after he shall have been directed by the mayor and aldermen to remove the same. No person shall cut down, dig up, deface or destroy, any post or posts, which are or may be erected by permission as aforesaid, except leave be first obtained from the owner thereof, or from the mayor and aldermen, under the penalty of four dollars for every post so cut down, dug up, defaced or destroyed. And the mayor and aldermen are hereby expressly authorized to remove any post or posts standing in any street or public place.

Not to be defaced or cut down.

Mayor and aldermen may remove same.

Shooting with bow and arrow, throwing stones, &c.

SECT. 22. No person shall shoot with or use a bow and arrow, play at foot ball, or fly any kite or balloon, or throw any stones, snow-balls, or other missiles within any of the streets, under the penalty of one dollar for every such offence.

Bathing in waters surrounding the city.

SECT. 23. No person shall swim or bathe in the waters surrounding the city, which are adjacent to any of the wharves, bridges, railroads, or avenues leading into the same, so as to be exposed to the view of spectators, or persons passing, under the penalty of one dollar for each offence.

Wantonly frightening horses.

SECT. 24. No person shall, within any of the streets, lanes or other public places within the city not enclosed, by means of any words, noise, gestures or any other act, wantonly frighten or drive any horse, under a penalty of one dollar for each offence.

Buildings and fences not to be erected on streets, without ascertaining bounds.

SECT. 25. No person shall erect or cause to be erected, any fence or building adjoining any street, land or public ground, without having first ascertained the bounds of the same, by application to the commissioner of streets, for that purpose, under the penalty of five dollars for every such offence. And when any encroachment shall be made upon any street, lane or public ground, and the party making the same shall neglect or refuse to remove the same, it shall be the duty of the commissioner of streets to cause the person or persons so offending to be prosecuted at law for such offence.

Encroachments to be abated.

Guns, pistols, squibs, &c., not to be fired.

SECT. 26. No person shall fire any gun, or pistol, which shall be loaded with ball or shot, or with powder only (unless in the discharge of military duty, or in the exercise of some other legal right so to do,) or fire any squib, cracker, serpent, or other preparation, whereof gunpowder is an ingredient, or which consists wholly of the same, within the compact part of this city, or within fifty rods of any building in this city, under a penalty for this offence, of not less than one dollar nor more than twenty dollars.

Horses, kine, swine, &c., not to go at large.

SECT. 27. No owner or person having the charge of any horse, kine, swine, sheep, goat or other grazing animal shall turn, or permit the same to go at large or loose into or in any street, under a penalty of not less than one dollar nor more than ten dollars for each offence.

Awnings and shades.

SECT. 28. It shall be lawful to place or continue to maintain awnings and shades before any house, shop, or store in any street, upon the terms and under the regulations mentioned in this section and not otherwise: *provided*, that the mayor and aldermen as to particular

buildings or streets may order that no awnings or shades shall be erected. Such awnings and shades shall be safely fixed and supported in such manner as not to interfere with passengers, and so that the lowest part thereof shall never be less than eight feet in height, above the sidewalk or street, and in no case to extend beyond the line of the sidewalk: and the person so placing or continuing to maintain the same shall in all respects conform to any directions in relation to the materials, the construction and maintenance thereof which shall be given by the mayor and aldermen. Any person violating any of the provisions of this section or any such direction of the mayor and aldermen, shall be liable to a penalty of not less than three nor more than ten dollars, and to a like penalty for every day that any such awning or shade shall be continued in violation of such provision or direction.

Blasting rocks, &c.

SECT. 29. No person shall blast any rock or other substance with gunpowder at any place within fifty rods of any street or public place in the city without license of the mayor and aldermen in writing, specifying the terms and condition on which said license is granted; under a penalty of not less than five nor more than ten dollars, for every such offence; *provided*, however, that the remedy of any person injured by the blasting of rocks shall not be affected by this section.

Defacing trees.

SECT. 30. No person, except by permission of the mayor and aldermen, shall climb, break, peel, cut, deface, either by posting bills of any description or otherwise, remove, injure, or destroy any of the trees growing, or which shall hereafter be planted on the mall or on the common lands, or in any street or public place of the city: and no person shall in any way fasten any horse or other animal to any of said trees, or allow any animal, owned by him or under his control, to stand so near to the same that they may be gnawed or otherwise injured by any horse or other animal so fastened or

Horses and other animals not to be fastened to trees.

permitted to stand. Any person violating any of the provisions of this section shall be liable to a penalty of not less than three nor more than ten dollars for each offence.

Sidewalks to be kept open.

SECT. 31. It shall be the duty of the city marshal to cause the sidewalks and footpaths of the city to be kept open and free from incumbrances and obstructions made by collections of people or from any other cause.

Carriages, &c., forbidden on sidewalks.

SECT. 32. No person shall drive, wheel, or draw any coach, cart, hand cart, wheelbarrow, or any other carriage, sleigh or sled of burden or pleasure, except children's hand carriages, upon any side walk in the city, or drive or permit any horse, oxen, or other beast, or any chaise or other vehicle under his care to go or stand upon any sidewalk or footpath in the city; and no person shall walk upon any side-walk with a wood horse, naked scythe, pitchfork, or any other tool or implement, unless the same shall be so covered up as to be rendered not dangerous to foot passengers. Whoever shall offend against any provision of this section, shall be liable to the penalty of not less than one dollar, nor more than ten dollars, for each offence.

Placing lumber, bales, &c., on sidewalks.

SECT. 33. No person shall place, or cause to be placed upon any footpath or sidewalk in the city, any lumber, iron, coal, trunk, bale, box, crate, cask, package, or article or thing whatsoever, whether of the same description or not, so as to obstruct a free passage for foot passengers for more than fifteen minutes, under a penalty of not less than one, nor more than ten dollars; and for each and every hour after notice to remove the same, given by the mayor or city marshal, or one of his deputies, or some other person by him authorised, the person or persons so offending shall be liable to a penalty of not less than three dollars, nor more than ten dollars. *Provided*, that nothing contained in this section shall be deemed to extend to such goods, wares or merchandise, as shall, in conformity with such rules,

regulations and orders as shall be made by the mayor and aldermen upon the subject, be placed in any street, or public place for the purpose of being sold at public auction.

Coal holes, &c., not to be made without license.

SECT. 34. No person shall make or cause to be made any aperture in or under any street or sidewalk in the city, for the purpose of constructing coal holes, or receptacles for any other article, or for light and air, or for an entrance, or for any other purpose, without the license of the mayor and aldermen, under a penalty of not less than one dollar, nor more than ten dollars for each offence, and a like penalty for every day the same shall remain after the mayor and aldermen shall order said aperture to be securely closed. And no person shall leave such coal hole or other aperture open or unfastened after sunset, nor in the day time, unless while actually in use with a person or persons by or near the same, under a penalty of not less than two nor more than ten dollars for each offence.

Not to be left open after sunset, &c.

Standing in a group so as to obstruct the passage.

SECT. 35. Three or more persons shall not stand in a group, or near each other on any foot or sidewalk, so as to obstruct a free passage for foot passengers; and any person or persons obstructing the foot or sidewalks shall move on immediately after a request made by the mayor, any police officer, or watchman, under a penalty of not less than one dollar nor more than ten dollars for each offence.

Obstructing passage to houses, &c.

SECT. 36. No person shall be or remain upon any door step or other projection, from any dwelling house or other building, so as to annoy or disturb any person, or shall obstruct any passage to the same or the appurtenances thereof; and every person, so being or remaining as aforesaid, when ordered by the mayor, any police officer or watchman, or by the owner or occupant of such dwelling house or other building, shall immediately peaceably depart and stay away therefrom, under

the penalty of not less than one dollar nor more than ten dollars for each offence.

Meaning of the word "street."

SECT. 37. Whenever the word "street" or "streets," is mentioned in this ordinance, it shall be understood as including alleys, lanes, courts, public squares, and public places; and it shall also be understood as including the sidewalks, unless the contrary is expressed, or such construction would be inconsistent with the manifest intent of the city council. And in streets where there are no raised sidewalks, five feet in width next adjoining each side of such streets, shall be deemed and taken to be the sidewalks of the same within the meaning of this ordinance.

Who shall be liable to penalties.

SECT. 38. Whenever anything is prohibited in this or any other ordinance, as well the person actually doing such prohibited things, as his agent or employee, shall be liable to the penalty prescribed.

Acts forbidden to be done without license may be licensed.

SECT. 39. Whenever in this or any other ordinance anything is prohibited to be done without the permission or license of any officers or board, such officers or board shall have the power to permit or license such thing to be done.

Complaint for violations of this ordinance to be made within six months.

SECT. 40. No person shall be prosecuted or tried for any breach of any of the provisions of this ordinance, unless complaint for the same shall be instituted and commenced within six months from the time of committing such breach.

When to take effect.

SECT. 41. This ordinance shall take effect and go into operation on and after the first day of October, in the year eighteen hundred and fifty-three; and all ordinances or parts of ordinances inconsistent herewith, shall be repealed from and after the said first day of October. But such repeal shall not affect any suit or prosecution commenced or pending before the time when such repeal shall take effect.

An Ordinance regulating the laying out and widening streets.[1]

Be it ordained by the city council of the city of Salem, as follows:

New streets, width of. Jan. 12, 1846.

[42.] SECT. 1. That from and after the passage of this ordinance, no new street or highway shall be laid out or accepted by the city council, of a less width than forty feet, provided the land through which it runs, and the estates adjoining said street will admit of such width without materially injuring the same.

City council to approve.

[43.] SECT. 2. No new street hereafter opened by the owner or owners of any land in this city of a less width than forty feet, shall be laid out or accepted by the city council, unless the width thereof shall have been approved by said city council at the time of the opening the same.

Marginal streets.

[44] SECT. 3. No new street leading directly to any of the rivers, ponds, or other waters which surround the city, shall be opened, laid out, or accepted by the city council, unless it extends to low water mark, when in the opinion of the mayor and aldermen it might have been so extended without damage to any adjoining estates.

An Ordinance establishing the office of commissioner of streets.[2]

Be it ordained by the city council of the city of Salem, as follows:

Commissioner of streets appointed. June 27, 1853.

[45.] SECT. 1. There shall annually be appointed by the city council, by ballot, in convention, an able and discreet person, to be styled the commissioner of streets, who shall also be the surveyor of highways,

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1 Passed January 12, 1846. 2 Passed June 27, 1853.

required by law to be chosen,[1] and who shall continue in office until removal, or until a successor be appointed and sworn to the faithful performance of his duty.

Compensation. He shall receive such compensation for his services as the city council shall establish, and shall be removeable at their pleasure; and in case said office shall become vacant, by death, resignation or otherwise, a successor shall forthwith be appointed in the manner prescribed.

Duties of commissioner of streets. [46.] SECT. 2. It shall be the duty of the commissioner of streets, under the general care and supervision of the mayor and aldermen, to superintend the general state of the streets, roads, sidewalks, lanes, bridges, public walks and squares of the city; to attend to the making, widening or alteration of the same; to cause the same to be kept in good, sufficient and suitable repair, and to make all contacts for labor and materials that may be necessary; to superintend the building and repair of any drains or sewers for the city, and to make all necessary contracts for the same. He shall also make all necessary arrangements for keeping the streets clean and in good order, and he shall give notice to the mayor or city marshal in case of any nuisance, obstruction or encroachment in or upon any of the streets, roads, sidewalks, bridges, public walks or squares of the city.

Same subject. [47.] SECT. 3. The commissioner of streets may make such arrangements with the overseers of the poor, for the purpose of procuring labor and materials in the discharge of his duty aforesaid, as the interest of the city may require.

Shall attend at city hall. Shall keep record [48.] SECT. 4. The street commissioner shall attend at the city hall a portion of each day. He shall

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1 For statute provisions respecting surveyor of highways, see Rev. Stat. c. 15, § 81–84; c. 24, 25, and 1839, c. 144.

keep a record of all his proceedings and a set of books, in which shall be entered, under appropriate heads, all contracts made by him, the receipts and expenditures in his department, with the names of all persons who have furnished materials, and of all workmen and the amount paid or due to each individual; and he shall make a monthly report in writing to the mayor and aldermen, stating minutely all his doings during the preceding month. On or before the first day of January, annually, he shall make a report to the city council, containing a general statement of the expenses of his department during the preceding year, the amount expended on the various streets, and such other information as he may consider desirable, together with an estimate in detail of the property under his charge belonging to the city.

of his doings.

Shall make report to city council.

An Ordinance concerning edge-stones and sidewalks.[1]

Be it ordained by the city council of the city of Salem, as follows:

[49.] SECT. 1. It shall be the duty of the commissioner of streets to cause edge-stones to be furnished, under the supervision of the mayor and aldermen, to the owner or owners of any lot of land abutting on any street in this city, who shall make written application for the same, and who shall engage therein to cause a permanent side walk of brick or dressed and pointed flag stone to be constructed, in front of said land, and to be at all times thereafter maintained and kept in repair, at the expense of the owner or owners of said

Commissioner to furnish edge-stones to applicants. Applications to be made to city clerk. August 8, 1853.

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[1] Passed August 8, 1853.

land, according to this ordinance. Said applications for edge-stones shall be made to the city clerk, and contained in a book to be kept for that purpose.

Commissioner to keep a record of edge-stones furnished and report same.

[50.] SECT. 2. It shall be the duty of the commissioner of streets to keep a register of all edge-stones furnished by the city, stating the persons to whom, the places where the same were delivered, and the expense thereof, and to report the same to the city council, on or before the first day of January annually.

Edgestones to be laid, and sidewalks to be constructed, under direction of commissioner of streets. Owner neglecting, commissioner shall complete sidewalks. Owners of land fronting on sidewalks to keep the same in repair.

[51.] SECT. 3. All the said edge-stones shall be laid and sidewalks graded and constructed under the direction of the commissioner of streets; and if said owner or owners shall neglect for the space of one month, after said edge-stones shall be laid, to complete a permanent sidewalk of the description aforesaid, it shall be the duty of the commissioner of streets to request in writing said owner or owners to complete said sidewalk; and if said owner or owners shall neglect for the space of one month to complete the same, it shall be the duty of the commissioner of streets to cause the same to be laid and completed, and said owner or owners shall pay the whole expense thereof; and whenever any sidewalk, which has been constructed in pursuance of this ordinance, or the edge-stones of which were furnished by the town or city, shall be out of repair, it shall be the duty of the commissioner of streets to notify, in writing, the owner or owners of the estate or lot of land upon which it fronts, that the said sidewalk needs repair, and to request him or them to repair the same; and if said owner or owners shall neglect, for the space of one month after such notice, to repair said sidewalk, it shall be the duty of said commissioner of streets to cause the same to be repaired, and said owner or owners shall pay the whole expense thereof.

TAXES.

STATUTE.
Assessors to be chosen; their duties.
Assistant assessors; their duties.
Taxes. City council may make further provision for collection of taxes.

ORDINANCE.
Duties of assistant assessors.

STATUTE.

The city assessors, who shall be annually chosen by the city council, shall exercise the same powers, and be subject to the same duties and liabilities, that the assessors in the several towns in the Commonwealth may exercise, or be subject to, under existing laws. And the city council shall appoint two persons in each ward, whose duty it shall be to furnish the assessors with all necessary information relative to persons and property taxable in their several wards, and who shall be sworn to the faithful performance of their duty. All taxes shall be assessed, apportioned and collected in the manner prescribed by the laws of the Commonwealth. *Provided, however*, that the city council may establish further or additional provisions for the collection thereof.[1]

Assessors to be chosen; their powers and duties. City charter § 11.

Assistant assessors; their duties.

Taxes.

City council may make further provision for collection of

An Ordinance defining the duties of assistant assessors.[2]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. The assistant assessors of the several

Duties of assis-

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1 For general laws respecting taxes, see R. S. c. 7, 8, 9, 15; act of amendment, § 1; stat. 1837, c. 86, 176; 1839, c. 111, 139; 1841, c. 127; 1842, c. 34; 1843, c. 21, 85, 87, 98; 1844, c. 36, 90, 145, 147, 165; 1845, c. 190; 1846, c. 195; 1847, c. 226; 1848, c. 166, 235; 1849, c. 149, 213; 1850, c. 57, 79, 98, 218, 267, 276, 308; 1852, c. 169; 1853, c. 33, 78, 122, 319.

2 Passed June 11, 1849.

tant assessors. June 11, 1849.

wards in the month of May annually and before the levying of the city tax, shall meet at the office of the assessors, and having been sworn to the faithful performance of their duties, shall have access to the books of the assessors, and shall proceed in the exercise of their best skill and judgment to estimate the value of all the real estate described in the said books and the number of polls and amount of personal property for which each person therein named shall be held liable to taxation, and all other estates and polls that may come to their knowledge not specified in said books. And in every case in which the estimates differ from the estimates recorded in said books, they shall make a record of the same, and confer with the assessors upon the subject of such difference, and report to said assessors such information as they may be possessed of, and the basis on which their estimates have been made.

TRUANTS.

STATUTES.

1. Cities and towns empowered to make provisions, &c., concerning truants.
2. They may appoint three or more persons to make complaint to judicial officer, &c.
3. Minors between 6 and 15 years convicted under §§ 1, 2, may be committed to institution provided, instead of being fined.
4. Minor convicted, in default of payment of fine may be committed.
5. May be discharged on proof of disability to pay fine.
6. Discharge of persons convicted.
7. Jurisdiction of offences may be vested by city ordinance in police court.
8. Truant children, &c., instead of being fined, may be committed to any institution of instruction, &c., for not more than two years.

STATUTES.

Cities and towns

1. Each of the several cities and towns, in this Com-

monwealth, is authorized and empowered to make all needful provisions and arrangements concerning habitual truants, and children not attending school, without any regular and lawful occupation, growing up in ignorance, between the ages of six and fifteen years; and, also, all such ordinances and by-laws, respecting such children, as shall be deemed most conducive to their welfare, and the good order of such city or town; and there shall be annexed to such ordinances, suitable penalties, not exceeding, for any one breach, a fine of twenty dollars: *provided*, that said ordinances and by-laws shall be approved by the court of common pleas for the county, and shall not be repugnant to the laws of the Commonwealth.

empowered to make provisions, &c., concerning truants. 1850, 294, § 1.

2. The several cities and towns, availing themselves of the provisions of this act, shall appoint, at the annual meetings of said towns, or annually by the mayor and aldermen of said cities, three or more persons, who alone shall be authorized to make the complaints, in every case of violation of said ordinances or by-laws, to the justice of the peace, or other judicial officer, who, by said ordinances, shall have jurisdiction in the matter, which persons, thus appointed, shall alone have authority to carry into execution the judgments of said justices of the peace, or other judicial officer.[1]

They may appoint three or more persons to make complaint to judicial officer, &c. Ibid, § 2.

3. Any minor between the ages of six and fifteen years, convicted under the provisions of an act entitled "an act concerning truant children and absentees from school," passed in the year one thousand eight hundred and fifty, of being an habitual truant, or of not attending school, or of being without any regular and lawful occupation, or growing up in ignorance, may, at the discretion of the justice of the peace or judicial officer having jurisdiction of the case, instead of the fine mentioned in

Minors between 6 and 15 years convicted under §§ 1, 2, may be committed to institution provided, instead of being fined. 1852, 283, § 1.

1 Section 3, of act of 1850, c. 294, was repealed by § 5, act of 1852, c. 283.

the first section of said act, be committed to any such institution of instruction, house of reformation, or suitable situation, as may be provided for the purpose under the authority given in said first section, for such time as such justice or judicial officer may determine, not exceeding one year.

Minor convicted in default of payment of fine, may be commited. Ibid 2.

4. Any minor convicted of either of said offences, and sentenced to pay a fine as provided in the first section of the act to which this is in addition, may, in default of payment thereof, be committed to said institution of instruction, house of reformation, or suitable situation provided as aforesaid, or to the county jail, as provided in case of non-payment of other fines. And upon proof that said minor is unable to pay said fine, and has no parent, guardian, or person chargeable with his support, able to pay the same, he may be discharged by said justice or judicial officer, whenever he shall see fit.

May be discharged on proof of inability to pay fines. Ibid 3.

Discharge of persons convicted. Ibid 4.

5. If any person so convicted be not discharged as aforesaid, he shall be discharged according to the provisions of the third section of the one hundred and forty-fifth chapter of the Revised Statutes.

Powers of judicial officers in unfinished cases. Ibid 4.

6. The powers of the justice of the peace or judicial officer, under this act and the act to which this is in addition, in all unfinished cases shall continue under any re-appointment to the same office, provided there be no interval between the expiration and re-appointment to said office.

Jurisdiction of offences may be vested by city ordinance in police court. 1853, 343, § 1.

7. Any city in this Commonwealth may, by ordinance, give jurisdiction of the offences arising under the several laws relating to truant children and absentees from school, to the justices of the police court of such city.

Truant children, &c., instead of being fined, may be committed to any institution of instruction, &c., for not more than two years.

8. Any minor, between the ages of six and sixteen years, convicted under the provisions of an act entitled "an act concerning truant children and absentees from school," passed in the year one thousand eight hundred

and fifty, of being an habitual truant, or of not attending school, or of being without any regular and lawful occupation, or of growing up in ignorance, may, at the discretion of the justice of the peace, or judicial officer having jurisdiction of the case, instead of the fine mentioned in the first section of said act, be committed to any such institution of instruction, house of reformation, or suitable situation, as may be provided for the purpose under the authority given in said first section, for such time as such justice or judicial officer may determine, not exceeding two years.[1]

WARDS OF THE CITY.

ORDINANCE.	
1. Wards established.	[3.] Boundaries of ward No. 1.
[2.] Ward boundaries.	[4.] Boundaries of ward No. 2.
	[5] Boundaries of ward No. 3.
	[6.] Boundaries of ward No. 4.

An Ordinance[2] establishing the wards of the city.[3]

Be it ordained by the city council of the city of Salem, as follows:

SECT. 1. That the present wards of said city be and hereby are established as the four wards into which

Wards, established Feb. 20, 1837.

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1 Section 3, of act of 1853, c. 343, provided that said act shall take effect in any city as soon as it may be accepted by the city council of said city by concurrent vote of the two branches thereof: and § 4 of same act repealed all acts and parts of acts inconsistent with said act, so far as the same may relate to cities.

2 Passed February 20, 1837,

3 Section 3 of the city charter makes it the duty of the city council, once in ten years, and not oftener, to revise, and if it be needful, to alter the wards of the city in such manner as to preserve, as nearly as may be, an equal number of voters in each ward.

the said city is to be divided, by virtue of an act of the General Court entitled "An act in addition to an act entitled an act establishing the city of Salem."

Boundaries of the wards.

Ward boundaries. (Town records Sept. 20, 1756.)

[2.] The following boundaries of the wards were fixed, at a meeting of the selectmen of Salem, held September 20, 1756,—and have been continued to the present time:

Boundaries of ward No. 1.

[3.] Ward No. 1—Bounded westerly on the Town House street,[1] to Messrs. Cabot's wharf; southerly on the South river and harbor; northerly on the Main street, from the town house to the Neck Gate, (so called,) and thence into the Cove, and to include the Neck and the island where the fort stands.

Boundaries of ward No. 2.

[4.] Ward No. 2—Bounded westerly on School House Lane;[1] northerly on the North River down to the Cove aforesaid; and southerly by the Main street down to said Cove; and including Planter's Marsh,[2] and the land on the northwest side of said Cove.

Boundaries of ward No 3.

[5.] Ward No. 3—Bounded northerly on the Main st. from the Town House street,[1] to Town Bridge; easterly on said Town House street to Messrs. Cabot's wharf aforesaid, and so over the river to the marsh, and thence down the river and by the harbor, to Gardner's Mills, (so called) and to Marblehead line; westerly by a line drawn from town bridge; southerly or southwesterly to the road from Lynn to Marblehead, where Lynn line crosses said road; and southerly by Lynn line and Marblehead line to the harbor aforesaid.

Boundaries of ward No. 4.

[6.] Ward No. 4—Bounded easterly on School House Lane;[1] southerly by the Main street from said lane to

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1 Washington street. 2 Bridge street.

the Town Bridge, (so called); and thence by the westerly line of ward No. 3, to Marblehead road aforesaid; and thence by Lynn line, and by Danvers line, to where the latter ends in, or by, the north side of the Northfield, at the river there, or in a cove; thence by the same and thence down the river so far as to include the eastermost part of said field; and thence to School House Lane[1] aforesaid.

WATCH.

STATUTES.

1. Selectmen to order a watch unless, &c.
2. Powers and duties of watchmen.
3. Watchmen to walk the rounds.
4. Constables on watch to carry badge of office.
5. Expense of watch otherwise kept to be defrayed by town.
6. Towns may determine number, qualifications, &c., of watch.
7. Watch may disperse any assembly of three or more persons, such as mentioned in R. S. 17, § 4 &c.

STATUTES.

1. When a military watch shall not be appointed to be kept, the selectmen of each town[2] shall have power, from time to time, to order a suitable watch to be kept nightly, within their town, from such hour in the evening as they shall appoint, until sun rising in the morning; and also a guard to be kept in the day time and evening, when they shall think such watch or guard necessary; and they may direct the number of persons, of which the watch or guard shall consist, the places and the hours for keeping the same; and they may give orders in writing, accordingly, directed to any constable

Selectmen to order a watch, unless, &c. R. S. 17, § 3.

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1 Washington street. 2 See note 1, p. 68, *ante*.

of the town, requiring him from time to time to warn such watch or guard, and to see that all persons so warned do attend, and perform their duty in such manner as shall be required; and in the warning thereof, care shall be taken, by the said selectmen, that some able householders, or other sufficient persons, be joined in each watch or guard.

Powers and duties of watchmen. Ibid § 4.

2. The constable or selectmen shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed; and, for that purpose, the watch shall have authority to examine all persons, whom they shall see walking abroad in the night after ten o'clock, and whom they shall have reason to suspect of any unlawful design, and to demand of them their business abroad at such time, and whither they are going; to enter any houses of ill fame, for the purpose of suppressing any riot or disturbance therein, and to arrest any persons there found, making or aiding and abetting in such riot or disturbance; and all persons, so walking abroad and suspected of any unlawful design, as aforesaid, who shall not give a satisfactory account of their so being abroad, and of their business, and all persons, so arrested in such houses of ill fame, shall be secured by imprisonment or otherwise, to be safely kept until the next morning, and shall then be taken before one of the nearest justices of the peace,[1] to be examined and proceeded against, according to the nature of their offences.

Watchmen to walk the rounds. Ibid, § 5.

3. The watchmen shall walk the rounds, in and about the streets, wharves, lanes and principal inhabited parts, within each town, to prevent any danger by fire, and to see that good order is kept; taking particular observation and inspection of all houses and families of evil fame; and they shall in all things strictly observe the charge given them as aforesaid.

Constables on watch to carry badge of office. Ibid, § 6.

4. Each constable, when attending watch or guard, shall carry with him the usual badge of his office.

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[1] See § 6, p. 167, *ante*

Expense of watch, otherwise kept, to be defrayed by town. Ibid, § 7.

5. When the inhabitants of any town shall determine that a watch shall be kept in any other manner than is provided in this chapter, the expense thereof shall be defrayed in like manner as other town charges.

Towns may determine number, qualifications, &c., of watch. Ibid, § 8.

6. Whenever any watch shall be established, according to the provisions of the preceding section, the town shall determine the number and qualifications of the persons to be employed for that purpose: and the selectmen shall appoint a suitable person to be the officer of the watch: and every watchman shall be equipped in such manner, as the selectmen of the several towns shall determine; and the powers and duties of the said officers and watchmen shall be the same, as are before prescribed in the case of a constables watch.[1]

Watch may disperse any assembly of three or more persons, such as mentioned in R. S. 17, § 4. &c. 1850, 186.

7. The watch in any city or town in this Commonwealth shall have authority to disperse any assembly of three or more persons, such as are mentioned in chapter seventeenth, section four, of the Revised Statutes, at any time after the setting of such watch for the night and before the discontinuance of the same the next morning, and any such person as is in said section mentioned, to examine, arrest and secure during said time, and him to keep and proceed against, as therein mentioned.[2]

WEIGHTS AND MEASURES.

STATUTES.

1. Appointment of sealers of weights and measures.
2. Same subject.
3. How sealers are removable.
4. Each town sealer to have complete sets of standards.
5. County treasurer to keep seal.

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[1] For other provisions see rest of chapter 17 R.S.

[2] By the act of 1852, c. 296 §1, the term "police officers," in the first section of an act entitled "an act in relation to the carrying of slung shot," passed in the year one thousand eight hundred and fifty, shall be construed to embrace watchmen.

6. Town treasurer to keep seal.
7. Sealers accountable to towns for preservation of standards.
8. Penalty for neglect of sealers.
9. "Hundred weight" to be construed the net hundred.
10. Public weighers to weigh according to the preceding section.
11. Who shall be deemed a public weigher. His duty in weighing. Penalty for breach thereof.
12. Of seals to be used.
13. Sealers to give notice annually, and to seal all weights, &c. Penalty for selling by weights, measures, &c., not sealed.
14. When buyer provides weights, &c., he shall be subject to penalties of stat. 1847, c. 242, §5.
15. Trying and sealing hay-scales, &c. Fees. Penalty for using, hay-scales, &c., not sealed
16. County and town treasurers shall keep sets of weights, measures and balances. How the same shall be made.
17. Standards shall be furnished by commonwealth.
18. County, city and town treasurers shall provide places for keeping the same.
19. Shall have care of same, keep them in repair, and replace them when lost, &c.
20. Penalty for neglect.
21. Town and city standards shall be sealed once in ten years. Penalty.

STATUTES.

Appointment of sealers of weights and measures. R. S. 15, § 38.

1. The selectmen[1] of each town[2] shall, in the month of March or April annually, appoint, unless the inhabitants themselves, at their annual meeting, shall choose the same, one sealer of weights and measures; and any other number which the inhabitants shall at their annual meeting, vote to have appointed.

Same subject. R. S. 30, § 12.

2. One or more suitable persons shall be annually appointed in each town, in the manner provided in the fifteenth chapter, to be sealers of weights and measures for such town.

How sealers are removable. Ibid, § 13.

3. The selectmen may remove from office any sealer of weights and measures in their town, and may fill all vacancies occasioned by such removal or otherwise.

Each town sealer to have complete sets of standards. Ibid, § 14.

4. When any town shall vote to have more than one sealer of weights and measures, the treasurer of the town shall, at the expense thereof, procure and preserve the necessary additional seals, weights and measures

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1 See § 8 of city charter p. 8, *ante*.

2 See note 1, p. 68, *ante*.

specified in chapter thirty; so that each sealer in such town may have complete sets of the same.

5. The county treasurers shall keep a seal for sealing town standards, and preserve the same. County treasurer to keep seal. Ibid, § 5.

6. Every town treasurer shall keep a seal, for sealing the weights and measures of the inhabitants of the town. Town treasurer to keep seal. Ibid § 8.

7. Every sealer of weights and measures shall receive of the town treasurer the town standards and seal, and shall give him a receipt therefor, expressing the condition in which the same may be; and he shall be accountable to the town for the due preservation of the same in the like condition, until he shall re-deliver them to the treasurer. Sealers accountable to towns for preservation of standards R. S. 30, § 15.

8. If any sealer of weights and measures shall neglect to perform his duty, as prescribed in the thirtieth chapter of the Revised Statutes, he shall for each neglect forfeit to the use of the town a sum not exceeding twenty dollars. Penalty for neglect of sealers. Ibid § 21

9. When any commodities shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois; and all contracts concerning goods sold by weight shall be understood and construed accordingly.[1] "Hundred weight" to be construed the net hundred. Ibid § 25.

10. Every public weigher of goods or commodities shall weigh the same, according to the provisions of the preceding section, and make his certificate accordingly. Public weighers to weigh according to the preceding section. Ibid § 26.

11. Every public weigher, who shall offend against the provisions of the preceding section, shall for every such offence forfeit to the use of the town a sum not exceeding ten dollars; and every weigher of goods or commodities, appointed by any town, and every weigher of goods or commodities, for hire or reward, shall be deemed and taken to be a public weigher, so far as relates to the provisions of this and the preceding section. Who shall be deemed a public weigher; his duty in weighing, and penalty for breach thereof. Ibid, § 27.

[1] See stat. 1837, c. 166.

Of seals to be used. 1847, 242, § 3.

12. The seals, used by the various sealers of weights and measures, shall hereafter be as follows, to wit: by the treasurer of the Commonwealth and his deputy, the letters C. M., by the county treasurers, the initial and final letters of their respective counties, followed by the letters Co.; by town and city sealers, the name of their respective towns and cities, or such intelligible abbreviation thereof as the selectmen of the towns, or the mayor and aldermen of cities, may prescribe.

Sealers, to give notice, annually, and to seal all weights, &c. Ibid § 5. R. S. 30, § 16.

13. Every sealer of weights and measures shall, in the month of May, annually, give public notice, by advertising in some newspaper, or posting up notifications in different parts of the town, stating the time and place when and where he will attend such of the inhabitants, as live within the limits described in the respective notifications, for every inhabitant of his town or city who uses weights and measures for the purpose of buying or selling, and for public weighers who have the same, to bring in their measures, weights, balances, scales, and beams, to be examined, adjusted, and sealed; and he shall forthwith adjust and seal all weights and measures brought to him for that purpose.[1] And he shall deface and destroy all such as cannot be brought to the just standard. And every person who shall presume to sell by any other weights, measures, scales, beams, or balances, than those which have been sealed as before provided, or as provided in the following section, shall forfeit and pay a sum not exceeding twenty dollars for every such offence; one half to enure to the use of the town or city, the other half to the complainant.

Penalty for selling by weights, measures, &c, not sealed.

When buyer provides weights, &c., he shall be subject to penalties of stat. 1847, c. 242, § 5. 1851, 68.

14. In all cases of buying and selling, where, by the customs of trade, the weights, measures, scales, beams and balances used are provided by the buyer, he shall be subject to the same penalties for the employment of

1 For fees for sealing see act of 1847, c. 242, § 4.

illegal weights, measures, scales, beams or balances, to be recovered in the same manner, and to the same use, as are enacted against the seller, for the like offence, by the fifth section of the act of 1847, c. 242.

Trying and sealing hay scales, &c. 1847, 242, § 6.

15. The sealers of every town and city shall go, once in every year, to every hay scale and platform-balance, which cannot be readily removed, and try, adjust, and seal the same, for which he shall be entitled to a fee of one dollar and fifty cents for every such scale or platform-balance, weighing five thousand pounds and upwards; and for every scale or platform-balance, weighing less than five thousand pounds, he shall be entitled to a fee of fifty cents; and all repairs and alterations, which it shall be necessary for him to make, shall be the subject of an additional charge. Any person using such scale or platform-balance, in buying or selling, that has not been so tried, adjusted, and sealed, at least once in every year, shall be subject to the same forfeiture as provided in the fifth section of this act[1], to be appropriated in the manner therein provided. And no sealer of weights and measures, except for the purposes of this section, shall carry his standard of weights, measures, and scales, from one place to another, for the purpose of adjusting others within the town or city.

Fees.

Penalty for using hay scales, &c., not sealed.

County and town treasurer shall keep sets of weights, measures and balances. How the same shall be made. Ibid, § 8. 1848, 332, § 6.

16. The treasurer of each county, and the treasurer of each town, shall keep a complete set of the said weights, measures, and balances, except the troy weight. Said weights and measures shall be made of copper, cast brass, or cast iron; the weights of four pounds, and all under that weight, to be made of brass; the larger weights may be made of iron, and all to be turned and finished. The liquid and dry measures shall be made of durable thickness, and if made of brass or iron, shall be turned inside and on the top edge or rim. The balances shall be made of brass, steel, or iron, and, in all cases, the edges and bearings shall be of hardened steel,

[1] § 13, *ante*, p. 258.

or agate. The dry measures to be made, in form and dimensions, to conform to the aforesaid standard; all to be proved, sealed, and marked by the standard weights, measures and balances of the Commonwealth.[1]

Standards shall be furnished by commonwealth. 1848, 332, § 1.

17. There shall be furnished, to the treasurer of each county, and the treasurer of each city and town, in this Commonwealth, at the expense of the Commonwealth, a complete set of the standard weights, measures, and balances, such as the treasurer of each county and the treasurer of each town is required to keep, by the provisions of the preceding section.

County, city, and town treasurers shall provide places for keeping the same. Ibid, § 2.

18. The treasurer of each county, and the treasurer of each city and town, shall provide, at the expense of such county, city, and town, respectively, some suitable place, in their said counties, cities, or towns, for the safe and suitable keeping and preservation of said weights, measures, and balances; and all expenses attending the boxing, putting up, transporting, and depositing, in their destined locations, said weights, measures, and balances, shall be defrayed by the counties, cities, and towns, respectively.

Shall have care of same, keep them in repair, and replace them when lost, &c. Ibid, § 3.

19. The treasurer of each county, and the treasurer of each city and town, shall have the care and oversight of said weights, measures, and balances, and shall see that the same are kept in good order and repair; and, in case they are lost, destroyed, or irreparably damaged, shall replace the same by similar weights, measures, and balances; and all expenses incurred under the provisions of this section, shall be defrayed by the counties, cities, and towns, respectively.

Penalty for neglect. Ibid, § 4.

20. If the treasurer of any county, city, or town, shall neglect to provide a suitable place, to keep the said weights, measures, and balances, or shall neglect to keep them in good order and repair, or shall suffer them to be lost, damaged, or destroyed, through his

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1 For standard weights, measures, and balances, see Stat. 1847, c. 242, §§1, 2, R.S., c 20, §22, 25.

neglect, contrary to the true meaning and intent of this act, he shall forfeit the sum of two hundred dollars, to be recovered, by indictment, to the use of the Commonwealth.

21. Every town and city treasurer shall, once at least in ten years, at the expense of the town or city, have the town or city standards of weights, measures, and balances, tried, adjusted and sealed, by the treasurer of the county in which the city or town is situated, or by the treasurer of the Commonwealth, or his deputy; and every town or city treasurer, who shall neglect to have the standards under his charge sealed, as herein provided, shall forfeit, to the use of the Commonwealth, a sum not exceeding fifty dollars.[1]

Town and city standards shall be sealed once in ten years. Ibid, § 8.

Penalty.

WOOD, BARK, CHARCOAL, HAY AND STRAW.

STATUTES.

1. Dimensions of cord wood.
2. Penalty for selling wood, &c., not measured.
3. Fees.
4. Wood, brought in by water, how measured.
5. Carters to have tickets.
6. City council may make by-laws regulating survey, &c., of wood, coal and bark, brought by water into city.
7. Dimensions, &c., of charcoal baskets, tubs or measures.
8. Dimensions of charcoal boxes, bins or cans.
9. Penalties for using illegal measures.
10. Mayor and aldermen, and selectmen to appoint persons to seize illegal measures.
11. Forfeitures how recoverable.

ORDINANCES.

1. Two places to be assigned for measuring wood and bark from country.
2. Appointment of measurers.—Form of certificate.

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1 For Statute provisions respecting weights, measures, and balances, see R.S., c. 30: c. 36, § 47. Stat. 1837, c. 166.: 1847, c. 242: 1848, c. 332: 1851, c. 68.

3. No sale shall be made without previous measurement.
4. Measurers may be removed.
5. Fees for measuring.
[6.] Stands for sale of hay and straw.
[7.] Stands for sale of wood, bark, or other fuel, except charcoal.
[8.] Penalty for standing in place not assigned.

STATUTE.

Dimensions of cord wood. R. S. 28, § 200.

1. All cord wood exposed to sale shall be either four feet, three feet, or two feet long, including half the carf; and the wood, being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four feet in width, and four feet in height.

Penalty for selling wood, &c., not measured. Ibid, § 201.

2. If any fire wood or bark, exposed to sale in any market, or upon any cart or other vehicle, shall be offered for sale before the same shall have been measured by a public measurer of wood and bark, and a ticket thereof signed by him delivered to the driver, certifying the quantity of wood which the load contains, the name of the driver, and the town in which he resides, the driver and owner of such wood or bark shall, for each load thereof, severally forfeit the sum of five dollars, to the use of the town where such wood or bark shall be so offered for sale.

Fees. Ibid, § 202.

3. The measurers of wood and bark[1] in any town shall be entitled to such fees for their services, as the selectmen of such town shall establish; and the said fees shall, in each case, be paid to the measurer, by the driver, and shall be repaid by the purchaser.

Wood brought in by water, how measured. Ibid, § 203.

4. All cord wood, brought by water into any town for sale and landed, shall be measured by a measurer, sworn as aforesaid; and for that purpose, the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length, and being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service.

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[1] Rev. Stat. c. 15, § 33, requires measurers of wood and bark to be sworn to the faithful discharge of the duties of their office.

5. Each wharfinger, carter or driver, who shall convey any firewood or bark from any wharf or landing place in any town, shall be furnished by the owner or seller of such wood or bark, with a ticket certifying the quantity which the load contains, and the name of the driver; and if any firewood or bark shall be conveyed as aforesaid, without such ticket accompanying the same, or if any driver shall refuse to produce and show such ticket on demand, to any measurer duly sworn as aforesaid, or to give his consent to have the same measured, or if such tickets shall certify a greater quantity of wood or bark than the load contains, in the opinion of the measurer aforesaid, after measuring the same, the driver and owner of such wood or bark, shall, for each load thereof, forfeit the sum of five dollars, to the use of the town where the offence shall be committed; provided, nevertheless, that nothing contained in this chapter shall be construed to extend to any person who shall transport or cart, or cause to be transported or carted, from any wharf or landing place to his own dwelling house or store, any cord wood or bark which he shall have purchased on such wharf or landing place, or shall have landed thereon upon his own account.

Carters to have tickets. Ibid, § 204.

6. The city council of Salem may make by-laws with suitable penalties, for the inspection, survey, admeasurement and sale of wood, coal and bark for fuel, brought by water into the city for sale, and may provide for the appointment of surveyors, inspectors and other officers, and establish their fees of office.

City council may make by-laws regulating survey &c., of wood, coal and bark, brought by water into city. 1839, 46, § 4. See p 17, *ante*.

7. From and after the first day of July 1853, in the sale of charcoal, all baskets, tubs, or measures, used in measuring the same, except as hereinafter provided, shall be of a cylindrical form, and of the following dimensions in the inside thereof, to wit: nineteen inches in diameter in every part thereof, and eighteen inches and one tenth of an inch in depth, measured from the highest part of the bottom thereof; which basket, tub,

Dimensions, &c., of charcoal baskets, tubs, or measures. 1853, 305, § 1.

or measure shall be deemed to be of the capacity of two bushels, and shall be filled level full; and every such basket, tub, or measure shall be sealed by a sealer of the town or city in which the person using the same shall usually reside or do business.

Dimensions of charcoal boxes, bins, or cans. Ibid, § 2.

8. It shall further be lawful, in the sale of charcoal, to measure the same in boxes, bins, or cans, of the following capacities, to wit: of five bushels, ten bushels, twenty bushels, thirty bushels, forty bushels, or fifty bushels, such boxes or bins being first lawfully sealed as aforesaid; and five thousand one hundred and thirty-two cubic inches shall be deemed equal to two bushels, or the level basket or tub, described in the preceding section.

Penalties for using illegal measures. Ibid, § 3.

9. Every person who shall measure any charcoal sold or offered for sale, in any basket, tub, box, bin, vessel, or measure, other or of less dimensions than herein described for such measures respectively, or not sealed as herein provided, unless by special agreement of the purchaser and seller, shall forfeit a sum not exceeding one dollar for each amount of two bushels of charcoal so measured or pretended to be measured, one half to the use of the city or town where the offence shall be committed, and the other half to the complainant; and such basket, tub, bin, vessel, or measure shall be destroyed.

Mayor and aldermen, and selectmen to appoint persons to seize illegal measures. Ibid, § 4.

10. The mayor and aldermen of any city, or the selectmen of any town, shall appoint one or more suitable persons to seize and destroy all baskets, tubs, boxes, bins, vessels, or measures, used for measuring charcoal, not in accordance with the provisions of this act, and also to prosecute all persons who shall offend against the said provisions.

Forfeitures how recoverable. Ibid, § 5.

11. All forfeitures mentioned in the preceding sections of this act, may be recovered before any justice of the peace or police court; and any interest which the town or city where such justice may reside, or in which

such police court may be established, may have in, or in respect to such penalty or forfeiture, shall not disqualify such justice or police court from acting in cases arising under this act.[1]

An Ordinance regulating the admeasurement and sale of wood and bark.[2]

Be it ordained by the city council of the city of Salem, as follows:

Two places to be assigned for measuring wood and bark from country. Feb'y 10, 1838.

SECT. 1. There shall be two places for the measuring of wood and bark brought into this city in carts, wagons or sleds from the country, for sale, to wit: Boston street, and North street, north of the bridge.

Appointment of measurers.

SECT. 2. Two persons shall be appointed by the mayor and aldermen annually, and at other times, when a vacancy happens, as measurers of wood and bark, brought into this city as aforesaid. They shall be under oath faithfully and impartially to perform the duties of their office, and shall have all the powers and perform all the duties of measurers of wood and bark, according to this ordinance and the statutes of this Commonwealth, relating to the measurement of wood and bark. Each person so appointed shall deliver to the owner or driver of each load of wood or bark measured by him, a ticket signed by him, in the form following:

Form of certificate.

SALEM, 18

This load of wood (or bark) drove by

measures feet.

Fees for measuring, 5 cents.

Measurer.

Measurers to make return to mayor and aldermen.

And it shall be the duty of said measurers to make a return to the mayor and aldermen on the first Monday

[1] The act of 1853, c. 305, § 6, repealed all acts and parts of acts inconsistent with said act. An act, passed in 1849, c. 143, respecting the sale of anthracite coal, was repealed by Stat. 1850, c. 25.

[2] Passed February 19, 1838.

of March annually, of the number of loads and the quantity of wood and bark they have measured the preceding year.

No sale shall be made without previous measurement.

SECT. 3. No person shall sell or offer for sale any wood or bark brought into this city as aforesaid, without having had the same measured as aforesaid; nor shall any person buy any wood or bark brought into this city, as aforesaid, unless the seller shall produce a ticket in the form aforesaid, under the penalty of one dollar for such offence.

Measurers may be removed.

SECT. 4. The mayor and aldermen may remove any measurer at any time, when it shall appear to them that he is negligent or unfaithful in his office.

Fees for measuring.

SECT. 5. The fee for measuring each load of wood and bark, and for the ticket, shall be five cents; and the same shall be paid by the driver thereof at the time of receiving said ticket, and repaid to him by the purchaser.

An Ordinance relating to the sale of hay and straw, wood, bark and other fuel.[1]

Be it ordained by the city council of the city of Salem, as follows:

Stands for sale of hay and straw. Aug. 8, 1853.

[6.] SECT. 1. That part of Bridge street between Winter and North streets, is hereby appointed and assigned as the only place in the city where wagons, carts, sleds or other carriages containing hay or straw, for sale, shall stand for the sale of such hay or straw.

Stands for sale of wood, bark, or other fuel, except charcoal.

[7.] SECT. 2. That part of Derby street between the Neck and Union street, and that part of Federal street between North and Washington streets, are appointed and assigned as the only places in the city where wagons, carts, sleds or other carriages containing wood, bark, or other fuel, excepting charcoal,

[1] Passed August 8, 1853.

brought into the city by land, for sale, shall stand for the sale of such fuel.

[8.] SECT. 3. The owner or driver of any wagon, cart, sled, or other carriage containing hay or straw, or wood, bark, or other fuel as aforesaid, excepting charcoal, for sale, who shall stand for the sale of such hay or straw, or wood or bark, or other fuel, excepting charcoal, in any other street, square, or place whatsoever than those appointed by this ordinance, shall be liable to a penalty of not less than one dollar nor more than five dollars. Penalty for standing in place not assigned.

WORK HOUSES.[1]

STATUTES.

[1.] Overseers of the poor to be chosen.
[2.] Government of the workhouse.
[3.] Power of overseers of poor.
[4.] Same subject.
[5.] Same subject.

An Act for employing and providing for the poor in the town of Salem, and for the better regulating the workhouse in said town.[2]

Whereas the town of Salem have lately found it necessary to erect a workhouse for the employment of the poor in said town:

[1.] *Be it enacted by the Governor, Council and House of Representatives*, That from and after the tenth day of March, 1774, at the anniversary meeting in March for the choice of town officers, the town of Salem are hereby empowered to choose five or more overseers of the poor,[3] who shall once in every month assemble themselves together to consult and determine of the most proper methods for the discharge of their office. Overseers of the poor to be chosen.

[2.] *And be it further enacted*, That the overseers of Government of

[1] For general provisions respecting work houses, see R. S., c. 16.

[2] This act was passed January 26, 1773, and has been continued in force by subsequent statute provisions of January 10, 1789, (Special Laws, vol. 1, p. 439,) and by R. S., c. 16, § 25. As the act is found only in the earliest editions of the published laws, it is printed here in full.

[3] See Overseers of Poor, p. 150, *ante*.

the work house. the poor of the town of Salem, for the time being, shall have the inspection, ordering and government of the said house, with power of appointing a master, or masters, and one or more assistants, for the more immediate care and oversight of the persons received into or employed in said house, which overseers at their monthly meetings shall have power to make orders and by-laws for the better and more decent regulating the said house, which orders and by-laws shall be binding until the next town meeting, to which they shall exhibit them, and when approved by the said town at a legal meeting, shall be obligatory until revoked by the said town.

Power of overseers of poor. [3.] *And be it further enacted*, That each one of the overseers aforesaid shall have power to send any idle and indigent person or persons, to the said house for entertainment and employment for the space of twenty-four hours; or any two of the said overseers shall have power to continue or send to said house such person or persons, till discharged by the major part of said overseers at a monthly meeting, which person or persons the master or masters, and assistants, are hereby required to receive and employ accordingly.

Same subject. [4.] *And be it further enacted*, That the overseers shall have full power of binding out into good families the children of parents who are unable or negligent to provide necessaries for the subsistence and support of their children; provided such parents are not rated for their personal estate or faculty.

Same subject. [5.] *And be it further enacted*, That the overseers of the poor in the town of Salem, be and they hereby are empowered to warn any and all intruders or others who are not inhabitants, to depart the town, and in case of refusal or neglect, to proceed in the same manner, and with as full power as the selectmen by law may or can, and the constables of said town are hereby required to observe and yield ready obedience to the orders and directions of the overseers aforesaid, by virtue and in consequence of this act.

REVISED ORDINANCES.

ORDINANCE.

1. The ordinances in this book declared to be the ordinances of the city.
2. Repeal of inconsistent ordinances, and of certain specified ordinances.
3. Pending suits or prosecutions not affected by repeal in preceding section.
4. How copies of the revised ordinances shall be kept, &c
5. Copies for city council.

An Ordinance in relation to the revised ordinances.[1]

Be it ordained by the city council of the city of Salem, as follows:

The ordinances in this book declared to be ordinances of the city.

SECT. 1. All the ordinances printed and contained in the preceding pages, that is to say in a certain book prepared and printed under the direction of the joint standing committee on printing, duly authorized for that purpose, by a vote of the city council of the city of Salem, passed on the ninth day of May, in the year eighteen hundred and fifty-three, shall be deemed and are hereby declared to be ordinances of the said city, and shall have the force thereof.

Repeal of inconsistent ordinances and certain specified ordinances.

SECT. 2. All orders, ordinances, and parts of orders and ordinances, inconsistent with any of the ordinances mentioned in the first section, are hereby repealed, more particularly the ordinances hereinafter specified, that is to say:

An Ordinance establishing the office of commissioner of streets, and defining the duties thereof, passed May 19, 1836.

An Ordinance establishing a system of accountability in the expenditures of the city, passed May 20, 1836.

An Ordinance prescribing the manner of recording the ordinances of the city, passed May 19, 1836.

An Ordinance establishing the office of city messenger, passed May 20, 1836.

An Ordinance for the prevention of fires, passed August 11, 1836.

An Ordinance to prevent unlawful and injurious practices in the streets and other public places of the city, passed August 11, 1836.

An Ordinance concerning edge-stones and side walks, passed February 19, 1838.

An Ordinance establishing suitable places for the sale of wood, bark, and other fuel, and hay and straw, passed March 11, 1839.

An Ordinance prescribing rules and regulations relative to nuisances, sources of filth, and causes of sickness within the city, passed May 13, 1839.

An Ordinance explanatory of and in addition to the fifth ordinance, entitled "an ordinance establishing a system of accountability in the expenditures of the city," passed May 3, 1841.

An Ordinance prescribing rules and regulations for the government of the market within the city of Salem, passed October 2, 1843.

An Ordinance establishing a market for the sale of swine, passed March 11, 1844.

An Ordinance in addition to an ordinance entitled "an ordinance to prevent unlawful and injurious practices in the streets and other public places of the city," passed April 28, 1845.

An Ordinance restraining the going at large of dogs within the city of Salem, passed April 24, 1848.

An Ordinance establishing a market for the sale of swine, passed October 8, 1849.

Pending suits or prosecutions not affected by repeal in preceding section.

SECT. 3. The repeal in the preceding section shall not affect any suit or prosecution pending at the time of such repeal, for any offence committed or for the recovery of any penalty or forfeiture incurred under any of the provisions so repealed; and no ordinance or order, or part of an ordinance or order, which has been heretofore repealed, shall be revived by the repeal, in the

preceding section, of any of the ordinances therein mentioned.

SECT. 4. All copies of the revised ordinances, not otherwise disposed of, shall be deposited with the city clerk, subject to the direction and control of the standing committee on public property. How copies of revised ordinances shall be kept, &c.

SECT. 5. Every member of the city council shall be entitled to one copy of the revised ordinances. Copies for city council.

In Common Council, Nov. 14, 1853, *passed to be ordained,*

JOHN WHIPPLE, President.

In the Board of Mayor and Aldermen, Nov. 14, 1853,

Passed to be ordained,

ASAHEL HUNTINGTON, Mayor.

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